House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
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CHAPTER 310

SENATE BILL 1028

AN ACT

AMENDING SECTION 6-126, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 6, CHAPTER 9, ARIZONA REVISED STATUTES, TO "MORTGAGE BROKERS, MORTGAGE BANKERS AND LOAN ORIGINATORS"; AMENDING SECTIONS 6-901, 6-903, 6-909, 6-943 AND 6-947, ARIZONA REVISED STATUTES; AMENDING TITLE 6, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; RELATING TO BANKS AND FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 6-126, Arizona Revised Statutes, is amended to read:

6-126. Application fees for financial institutions and enterprises

A. The following nonrefundable fees are payable to the department with the filing of the following applications:

1. To apply for a banking permit, ten thousand dollars.

2. To apply for an amendment to a banking or savings and loan association permit, one thousand dollars.

3. To establish each banking branch office, one thousand five hundred dollars.

4. To move a banking office to other than an established office of a bank, one thousand dollars.

5. To apply for a savings and loan association permit, ten thousand dollars.

6. To establish each savings and loan association branch office, one thousand five hundred dollars.

7. To move an office of a savings and loan association to other than an established office, one thousand dollars.

8. To organize and establish a credit union, one hundred dollars.

9. To establish each credit union branch or credit union freestanding automated teller machine or to move a credit union office to other than an established office of a credit union, two hundred fifty dollars.

10. To organize and establish any other financial institutions for which an application or investigation fee is not otherwise provided by law, two thousand five hundred dollars.

11. To acquire control of a financial institution, other than a consumer lender, five thousand dollars.

12. To apply for a trust company license, five thousand dollars.

13. To apply for a commercial mortgage banker, mortgage banker, escrow agent or consumer lender license, one thousand five hundred dollars.

14. To apply for a mortgage broker, sales finance company or debt management company license, eight hundred dollars.

15. To apply for a collection agency license, one thousand five hundred dollars.

16. To apply for a deferred presentment company license, one thousand dollars.

17. To apply for a motor vehicle dealer license, three hundred dollars.

18. To apply for a branch office of an escrow agent, consumer lender, commercial mortgage banker, mortgage banker, trust company, money transmitter, collection agency or deferred presentment company, five hundred dollars.

19. To apply for a branch office of a mortgage broker, debt management company or sales finance company, two hundred fifty dollars.

20. To apply for approval of the articles of incorporation of a business development corporation, five hundred dollars.

21. To establish each freestanding automated teller machine, not otherwise provided by law, five hundred dollars.

22. To apply for approval for the merger or consolidation of two or more financial institutions, five thousand dollars per institution.

23. To apply for approval to convert from a national bank or federal savings and loan charter to a state chartered institution, five thousand dollars.

24. To apply for approval to convert from a federal credit union to a state chartered credit union, one thousand dollars.

25. To apply for approval to merge or consolidate two or more credit unions, five hundred dollars per credit union.

26. To move an established office of an enterprise to other than an established office, fifty dollars.

27. To issue a duplicate or replace a lost enterprise's license, one hundred dollars.

28. To change a responsible person on a mortgage broker's, commercial mortgage banker's or a mortgage banker's license, two hundred fifty dollars.

29. To change an active manager on a collection agency license or a manager of a money transmitter branch office license, two hundred fifty dollars.

30. To change the licensee name on a financial institution or enterprise license, two hundred fifty dollars.

31. To apply for a money transmitter license, one thousand five hundred dollars plus twenty-five dollars for each branch office and authorized delegate to a maximum of four thousand five hundred dollars.

32. To acquire control of any money transmitter or controlling person pursuant to chapter 12 of this title, two thousand five hundred dollars.

33. To receive the following publications:

(a) Quarterly bank and savings and loan statement of condition, not more than ten dollars per copy.

(b) Monthly summary of actions report, not more than five dollars per copy.

(c) A list of licensees, a monthly pending actions report and all other in-house prepared reports or listings made available to the public, not more than one dollar per page.

34. TO APPLY FOR A LOAN ORIGINATOR LICENSE, AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT.

B. On issuance of a license or permit for a financial institution or enterprise, the superintendent shall collect the first year's annual assessment or renewal fee for the financial institution or enterprise prorated according to the number of quarters remaining until the date of the next annual assessment or renewal.

C. The following annual renewal fees shall be paid each year:

1. For an escrow agent, or trust company, one thousand dollars plus two hundred fifty dollars for each branch office.

2. For a debt management company or sales finance company, five hundred dollars plus two hundred dollars for each branch office.

3. For a collection agency, six hundred dollars plus two hundred dollars for each branch office.

4. For a motor vehicle dealer, one hundred fifty dollars.

5. For an inactive mortgage broker, two hundred fifty dollars.

6. For a mortgage banker that negotiates or closes in the aggregate one hundred loans or less in the immediately preceding calendar year, seven hundred fifty dollars, and for a mortgage banker that negotiates or closes in the aggregate over one hundred loans in the immediately preceding calendar year, one thousand two hundred fifty dollars. In addition, a mortgage banker shall pay two hundred fifty dollars for each branch office.

7. For a commercial mortgage banker, one thousand two hundred fifty dollars. In addition, a commercial mortgage banker shall pay two hundred fifty dollars for each branch office.

8. For a mortgage broker that negotiates or closes in the aggregate fifty loans or less in the immediately preceding calendar year, two hundred fifty dollars and for a mortgage broker that negotiates or closes in the aggregate more than fifty loans in the immediately preceding calendar year, five hundred dollars. In addition, a mortgage broker shall pay two hundred dollars for each branch office.

9. For a consumer lender, one thousand dollars plus two hundred dollars for each branch office.

10. For a money transmitter, five hundred dollars plus twenty-five dollars for each branch office and each authorized delegate to a maximum of two thousand five hundred dollars.

11. For a deferred presentment company, four hundred dollars. In addition, a deferred presentment company shall pay two hundred dollars for each branch office.

12. FOR A LOAN ORIGINATOR, AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT.

13. FOR AN INACTIVE STATUS LOAN ORIGINATOR, AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT.

14. FOR A LOAN ORIGINATOR LICENSE TRANSFER, AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT.

D. The license, renewal or branch office permit fee for a premium finance company for each calendar year or part thereof shall not be less than one hundred dollars or more than three hundred dollars as set by the superintendent. If the license is issued or the branch office is opened after June 30 in any year, the fees shall not be less than fifty dollars or more than one hundred fifty dollars for that year.

Sec. 2. Heading change

The chapter heading of title 6, chapter 9, Arizona Revised Statutes, is changed from "MORTGAGE BROKERS AND MORTGAGE BANKERS" to "MORTGAGE BROKERS, MORTGAGE BANKERS AND LOAN ORIGINATORS".

Sec. 3. Section 6-901, Arizona Revised Statutes, is amended to read:

6-901. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified.

2. "Compensation" means anything of value or any benefit, including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time.

3. "CONTINUING EDUCATION UNIT" MEANS A FIFTY MINUTE PERIOD OF TIME IN A CONTINUING EDUCATION COURSE THAT RELATES TO THE MORTGAGE INDUSTRY OR TO MORTGAGE TRANSACTIONS, INCLUDING COURSES TAKEN TO MAINTAIN RECOGNIZED INDUSTRY DESIGNATIONS.

~~3.~~ 4. "Investor" means a person who lends or invests money in mortgage loans.

~~4.~~ 5. "License" means a license issued under this article.

~~5.~~ 6. "Licensee" means a person licensed under this article.

7. "LOAN ORIGINATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 6-991.

~~6.~~ 8. "Mortgage broker" means a person who is not exempt under section 6-902 and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.

~~7.~~ 9. "Mortgage loan" means a loan secured by a mortgage or deed of trust or any lien interest on real estate located in this state created with the consent of the owner of the real estate.

~~8.~~ 10. "Mortgage loan closing" means the day by which all documents relating to the mortgage loan have been executed and recorded and all monies have been accounted for under the terms of the escrow instructions.

Sec. 4. Section 6-903, Arizona Revised Statutes, is amended to read:

6-903. Licensing of mortgage brokers required; qualifications; application; bond; fees; renewal

A. A person shall not act as a mortgage broker if ~~he~~ THE PERSON is not licensed under this article.

B. The superintendent shall not grant a mortgage broker's license to a person, other than a natural person, who is not registered to do business in this state on the date of granting the license. An applicant for an original mortgage broker's license shall:

1. Have not less than three years' experience as a mortgage broker, or equivalent lending experience in a related business during the five years immediately preceding the time of application.

2. Have satisfactorily completed a course of study approved by the superintendent during the three years immediately preceding the time of application.

3. Have passed a mortgage broker's test, pursuant to section 6-908, not more than one year before the granting of the license.

C. A person shall make an application for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the superintendent. The superintendent may require additional information on the experience, background, honesty, truthfulness, integrity and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the superintendent may require information as to the honesty, truthfulness, integrity and competency of any officer, director, shareholder or other interested party of the association, corporation or group.

D. The nonrefundable application fee and annual renewal fee are as prescribed in section 6-126. The nonrefundable application fee shall accompany each application for an original license only. The superintendent shall deposit, pursuant to sections 35-146 and 35-147, the monies in the state general fund.

E. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under the provisions of this article. For THE purposes of this subsection, an employee does not include an independent contractor. A responsible individual shall be a resident of this state, shall be in active management of the activities of the licensee governed by this article and shall meet the qualifications set forth in subsection B of this section for a licensee.

F. A licensee shall notify the superintendent that its responsible individual will cease to be in active management of the activities of the licensee within ten days of learning that fact. The licensee has ninety days after the notification is received by the superintendent within which to replace the responsible individual with a qualified replacement and to so notify the superintendent. If the license is not placed under active management of a qualified responsible individual and if notice is not given

to the superintendent within the ninety day period, the license of the licensee expires.

G. Every person licensed as a mortgage broker shall deposit with the superintendent, before doing business as a mortgage broker, a bond executed by the licensee as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the faithful compliance of the licensee, including ~~his~~ THE LICENSEE'S directors, officers, members, partners, trustees and employees, with this article. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or ~~his~~ THE LICENSEE'S employees and to this state for the benefit of the person injured. Only one bond is required for any person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or are members of such firm, association or corporation. No suit may be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period provided in section 12-543, paragraph 3. If an injured person commences an action for a judgment to collect from the bond, the injured person shall notify the superintendent of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the superintendent on request.

H. The bond required by this section shall be ten thousand dollars for licensees whose investors are limited solely to institutional investors, and fifteen thousand dollars for licensees whose investors include any noninstitutional investors.

I. For THE purposes of subsection H of this section:

1. "Institutional investor" means a state or national bank, a state or federal savings and loan association, a state or federal savings bank, a state or federal credit union, a federal government agency or instrumentality, a quasi-federal government agency, a financial enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust, or an insurance company.

2. "Investor" means any person who directly or indirectly provides TO A MORTGAGE BROKER funds ~~to a mortgage broker which funds~~ THAT are, or are intended to be, used in the making of a loan, and any person who purchases a loan, or any interest therein, from a mortgage broker or in a transaction that has been directly or indirectly arranged or negotiated by a mortgage broker.

J. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or a licensee may deposit with the superintendent a deposit in the form of cash or alternatives to cash in the same amount as the bond required under subsection G of this section. The superintendent may accept any of the following as an alternative to cash:

1. Certificates of deposits or investment certificates ~~which~~ THAT are payable or assigned to the state treasurer, issued by banks or savings banks doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts ~~which~~ THAT are payable or assigned to the state treasurer, issued by a savings and loan association doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

3. Certificates of deposit, investment certificates or share accounts ~~which~~ THAT are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

K. The superintendent shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed ten dollars for each cash or alternatives to cash deposit and shall be paid by the applicant or licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

L. In addition to such other terms and conditions as the superintendent prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the superintendent or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years from the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.
2. The surrender of the license.
3. The revocation of the license.
4. The expiration of the license.

M. A licensee or an employee of the licensee shall not advertise for or solicit mortgage business in any manner without using the name and license number as issued on the mortgage broker's principal place of business license, except that a licensee may employ or refer to the commonly used name and any trademarks or service marks of any affiliate. If a license is issued in the name of a natural person, nothing in the advertising or solicitation may imply the license is in the name of another person or entity. For the ~~purpose~~ PURPOSES of this subsection, "advertise" does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan may be obtained.

N. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.

2. Keeps a record of the investigation for not less than two years after termination.

O. A license is not transferable or assignable and control of a licensee may not be acquired through a stock purchase or other device without the prior written consent of the superintendent. Written consent shall not be given if the superintendent finds that any of the grounds for denial, revocation or suspension of a license as set forth in section 6-905 are applicable to the acquiring person. For the ~~purpose~~ PURPOSES of this subsection, "control" means the power to vote more than twenty per cent of outstanding voting shares of a licensed corporation, partnership, association or trust.

P. The licensee is liable for any damage caused by any of ~~his~~ THE LICENSEE'S employees while acting as an employee of the licensee.

Q. A licensee shall comply with the requirements of section 6-114 relating to balloon payments.

R. The examination and course of study requirements of this section shall be waived by the superintendent for any person applying for a license who, within the six months immediately prior to the submission of the application, has been a licensee or a responsible person pursuant to this chapter.

S. IF THE APPLICANT FOR RENEWAL OF A MORTGAGE BROKER LICENSE IS A NATURAL PERSON, THE APPLICANT SHALL HAVE SATISFACTORILY COMPLETED TWELVE CONTINUING EDUCATION UNITS BY A CONTINUING EDUCATION PROVIDER APPROVED BY THE SUPERINTENDENT BEFORE SUBMITTING THE RENEWAL APPLICATION. IF THE APPLICANT IS OTHER THAN A NATURAL PERSON, THE DESIGNATED RESPONSIBLE INDIVIDUAL SHALL HAVE SATISFACTORILY COMPLETED TWELVE CONTINUING EDUCATION UNITS BY A CONTINUING EDUCATION PROVIDER APPROVED BY THE SUPERINTENDENT BEFORE SUBMITTING THE RENEWAL APPLICATION.

T. A LICENSEE WHO EMPLOYS A LOAN ORIGINATOR SHALL COMPLY WITH SECTION 6-991.03.

Sec. 5. Section 6-909, Arizona Revised Statutes, is amended to read:

6-909. Prohibited acts

A. Except for employment verifications, verifications of mortgages and loans, and deposit or account verifications, a person, in connection with or incidental to the making of any mortgage loan, shall not induce, require or permit any document to be signed by a party to the transaction if such document contains any blank spaces to be filled in after it has been signed, except that the party may specifically authorize the licensee or the escrow agent handling the transaction, in writing, to complete certain blank spaces.

B. A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage loan if such person is not licensed pursuant to this article. A mortgage broker shall not pay compensation to,

contract with or employ as an independent contractor a person who is acting as a mortgage broker or mortgage banker but who is not licensed under this chapter.

C. A person engaged in the mortgage business shall not knowingly advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for a mortgage loan. The charges or rates of charge, if stated, shall be set forth in such manner as to prevent misunderstanding by prospective borrowers.

D. A mortgage broker shall not request or require a person seeking a mortgage loan on real property designed principally for the occupancy of from one to four families in an amount of two hundred thousand dollars or less to enter into an agreement ~~which~~ THAT prohibits the person from seeking the loan from another source.

E. A mortgage broker ~~shall not~~, except in good faith, SHALL NOT delay or cause delay in the closing of a loan that results in increased costs to a borrower.

F. A mortgage broker shall not record or cause to be recorded any document ~~which~~ THAT would give rise to liability under section 33-420.

G. A mortgage broker shall not, for compensation, either directly or indirectly make or negotiate or offer to make or negotiate a loan that is either:

1. Less than five thousand dollars.

2. Not secured by a mortgage or deed of trust or other lien interest in real property.

H. A person who is employed by a licensee to act in the capacity of a mortgage broker shall not be concurrently employed by any other licensee to act as a mortgage broker, except with the prior written approval of all the concurrently employing licensees.

I. A mortgage broker shall not collect compensation for rendering services as a real estate broker or real estate salesman unless both of the following apply:

1. The mortgage broker is licensed pursuant to title 32, chapter 20.

2. The mortgage broker has disclosed to the person from whom the compensation is collected that the mortgage broker is receiving compensation both for mortgage broker services, if applicable, and for real estate broker or real estate salesman services.

J. A licensee shall not accept any assignment of the borrower's wages or salary in connection with activities governed by this article.

K. A mortgage broker shall not receive or disburse monies in servicing or arranging a mortgage loan except as provided in section 6-906, subsection C.

L. A mortgage broker shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage broker business.

M. A mortgage broker shall not fail to truthfully account for the monies belonging to a party to a mortgage loan transaction or fail to disburse monies in accordance with his agreements.

N. A mortgage broker shall not engage in illegal or improper business practices.

O. A mortgage broker shall not record a mortgage or deed of trust if monies are not available for the immediate disbursal to the mortgagor unless, before that recording, the mortgage broker informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay.

P. A mortgage broker shall not require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

Q. A MORTGAGE BROKER MUST REASONABLY SUPERVISE THE ACTIVITIES OF A LOAN ORIGINATOR WHO IS LICENSED PURSUANT TO ARTICLE 4 OF THIS CHAPTER AND WHO IS EMPLOYED BY THE MORTGAGE BROKER.

Sec. 6. Section 6-943, Arizona Revised Statutes, is amended to read:

6-943. <u>Licensing of mortgage bankers required; qualifications; application; bond; fees; renewal</u>

A. A person shall not act as a mortgage banker if he is not licensed under this article.

B. The superintendent shall not grant a mortgage banker's license to a person, other than a natural person, who is not registered to do business in this state on the date of application for a license. The superintendent shall not issue a mortgage banker's license or a renewal of a license to an applicant unless the applicant meets all of the requirements prescribed in subsection C of this section. The superintendent shall determine whether the applicant meets the requirements based on the application, and evidence presented at a hearing, if any, or any other evidence that the superintendent may have regarding qualifications of the applicant.

C. In order to qualify for a mortgage banker license or a renewal of a license an applicant shall:

1. Have not fewer than three years' experience in the business of making mortgage banking loans or equivalent lending experience in a related business. If the applicant is a person other than a natural person, the responsible individual shall meet this requirement.

2. Have engaged or intend to engage in the business of making mortgage loans or mortgage banking loans.

3. Either:

(a) Be authorized to do business with any of the following:

(i) The federal housing administration.

(ii) The veterans administration.

(iii) The federal national mortgage association.

(iv) The federal home loan mortgage corporation.

(b) Notwithstanding paragraph 5 of this subsection, at all times have and maintain a net worth of not less than two hundred fifty thousand dollars.

4. Provide the superintendent with a current audited financial statement or that of its parent company prepared by an independent certified public accountant in accordance with generally accepted accounting principles including:

(a) The certified public accountant's opinion as to the fairness of the presentation in conformity with generally accepted accounting principles.

(b) A balance sheet prepared within the previous six months and certified by the licensee. The superintendent may require a more recent balance sheet.

(c) A statement of operations and retained earnings and a statement of changes in financial position provided the applicant has commenced operations.

(d) Notes to the financial statement if applicable.

5. At all times have and maintain a net worth of not less than one hundred thousand dollars.

D. A person shall make an application for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the superintendent including the requirements prescribed in subsection C of this section. The superintendent may require additional information on the experience, background, honesty, truthfulness, integrity and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the superintendent may require information as to the honesty, truthfulness, integrity and competency of any officer, director, shareholder, member, partner, trustee, employee or other interested party of the association, corporation or group.

E. The nonrefundable application fee and annual renewal fee shall be as prescribed in section 6-126. The nonrefundable application fee shall accompany each application for an original license only.

F. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage banking business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage banking business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under ~~the provisions of~~ this article. For the purposes of this article an employee

1 does not include an independent contractor. For the purposes of this
2 article, a responsible individual shall be a resident of this state, shall be
3 in active management of the activities of the licensee governed by this
4 article and shall have not less than three years' experience in the business
5 of making mortgage banking loans or equivalent experience in a related
6 business.
7 G. A licensee shall notify the superintendent that its responsible
8 individual will cease to be in active management of the licensee within ten
9 days of learning that fact. Not more than ninety days after the
10 superintendent receives the notice, the licensee shall place itself under the
11 active management of a qualified responsible person and notify the
12 superintendent. If the licensee is not placed under active management of a
13 qualified responsible individual and if notice is not received by the
14 superintendent within the ninety day period, the license of the licensee
15 expires.
16 H. Every person licensed as a mortgage banker shall deposit with the
17 superintendent, before doing business as a mortgage banker, a bond executed
18 by the licensee as principal and a surety company authorized to do business
19 in this state as surety. The bond shall be conditioned on the faithful
20 compliance of the licensee, including his directors, officers, members,
21 partners, trustees and employees, with this article. Only one bond is
22 required for a person, firm, association or corporation irrespective of the
23 number of officers, directors, members, partners or trustees who are employed
24 by or are members of the firm, association or corporation. The bond is
25 payable to any person injured by the wrongful act, default, fraud or
26 misrepresentation of the licensee and to this state for the benefit of any
27 injured person. The coverage shall be maintained in the minimum amount
28 prescribed in this subsection, computed on a base consisting of the total
29 assets of the licensee plus the unpaid balance of loans which it has
30 contracted to service for others as of the end of the licensee's fiscal year.

Base	Minimum Bond
Not over $1,000,000	$25,000 for the first $500,000 plus $5,000 for each $100,000 or fraction thereof over $500,000
$1,000,001 to $10,000,000	$50,000 plus $5,000 for each $1,800,000 or fraction thereof over $1,000,000
$10,000,001 to $100,000,000	$75,000 plus $5,000 for each $18,000,000 or fraction thereof over $10,000,000
$100,000,001 and over	$100,000

No suit may be commenced on the bond after the expiration of one year
following the commission of the act on which the suit is based, except that
claims for fraud or mistake are limited to the limitation period provided in
section 12-543, paragraph 3. If any injured person commences an action for a
judgment to collect on the bond, the injured person shall notify the
superintendent of the action in writing at the time of the commencement of

1 the action and shall provide copies of all documents relating to the action
2 to the superintendent on request.
3 I. Notwithstanding subsection H of this section, the bond required
4 shall be twenty-five thousand dollars for licensees whose investors are
5 limited solely to institutional investors.
6 J. For purposes of subsection I of this section:
7 1. "Institutional investor" means a state or national bank, a state or
8 federal savings and loan association, a state or federal savings bank, a
9 state or federal credit union, a federal government agency or
10 instrumentality, a quasi-federal government agency, a financial enterprise, a
11 licensed real estate broker or salesman, a profit sharing or pension trust,
12 or an insurance company.
13 2. "Investor" means any person who directly or indirectly provides
14 funds to a mortgage banker which funds are, or are intended to be, used in
15 the making of a loan, and any person who purchases a loan, or any interest
16 therein, from a mortgage banker or in a transaction that has been directly or
17 indirectly arranged or negotiated by a mortgage banker.
18 K. Notwithstanding section 35-155, in lieu of the bond described in
19 this section, an applicant for a license or a licensee may deposit with the
20 superintendent a deposit in the form of cash or alternatives to cash in the
21 amount prescribed in subsection H or I of this section, as applicable. The
22 superintendent may accept any of the following as an alternative to cash:
23 1. Certificates of deposit or investment certificates which are
24 payable or assigned to the state treasurer, issued by banks or savings banks
25 doing business in this state and fully insured by the federal deposit
26 insurance corporation or any successor institution.
27 2. Certificates of deposit, investment certificates or share accounts
28 which are payable or assigned to the state treasurer, issued by a savings and
29 loan association doing business in this state and fully insured by the
30 federal deposit insurance corporation or any successor institution.
31 3. Certificates of deposit, investment certificates or share accounts
32 which are payable or assigned to the state treasurer, issued by a credit
33 union doing business in this state and fully insured by the national credit
34 union administration or any successor institution.
35 L. The superintendent shall deposit the cash or alternatives to cash
36 received under this section with the state treasurer. The state treasurer
37 shall hold the cash or alternatives to cash in the name of this state to
38 guarantee the faithful performance of all legal obligations of the person
39 required to post bond pursuant to this section. The person is entitled to
40 receive any accrued interest earned from the alternatives to cash. The state
41 treasurer may impose a fee to reimburse the state treasurer for
42 administrative expenses. The fee shall not exceed ten dollars for each cash
43 or alternatives to cash deposit and shall be paid by the applicant or
44 licensee. The state treasurer may prescribe rules relating to the terms and
45 conditions of each type of security provided by this section.

M. In addition to such other terms and conditions as the superintendent prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the superintendent or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years from the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.
2. The surrender of the license.
3. The revocation of the license.
4. The expiration of the license.

N. A licensee or an employee of the licensee shall not advertise for or solicit mortgage banking business in any manner without using the name and license number as issued on the mortgage banker's principal place of business license, except that a licensee may also employ or refer to the commonly used name and any trademarks or service marks of any affiliate. If a license is issued in the name of a natural person, nothing in the advertising or solicitation may imply that the license is in the name of another person or entity. For the ~~purpose~~ PURPOSES of this subsection, ~~"~~advertise~~"~~ does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan or mortgage banking loan may be obtained.

O. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.
2. Keeps a record of the investigation for not less than two years after termination.

P. The licensee is liable for any damage caused by any of his employees while engaged in the business of making mortgage loans or mortgage banking loans.

Q. A licensee shall comply with the requirements of section 6-114 relating to balloon payments.

R. Notwithstanding subsection C, paragraph 4 of this section, licensees and applicants whose own resources are derived exclusively from correspondent contracts between mortgage bankers and banks, savings banks, trust companies, savings and loan associations, credit unions, profit sharing or pension trusts, consumer lenders or insurance companies shall provide the superintendent with a current financial statement or that of its parent company prepared in accordance with generally accepted accounting principles including:

1. A balance sheet prepared within the previous six months and certified by the licensee. The superintendent may require a more recent balance sheet.
2. A statement of operations and retained earnings and a statement of changes in financial position provided the applicant has commenced operations.

3. Notes to the financial statement if applicable.

S. In addition to the grounds specified in section 6-945, subsection A, failure of a licensee to operate the business of making mortgage loans or mortgage banking loans for a continuous period of twelve months or more shall constitute grounds for revocation of such license. The superintendent, upon good cause shown, may extend the time for operating such business for a single fixed period which shall not exceed twelve months.

T. IF THE APPLICANT FOR RENEWAL OF A MORTGAGE BANKER LICENSE IS A NATURAL PERSON, THE APPLICANT SHALL HAVE SATISFACTORILY COMPLETED TWELVE CONTINUING EDUCATION UNITS BY A CONTINUING EDUCATION PROVIDER APPROVED BY THE SUPERINTENDENT BEFORE SUBMITTING THE RENEWAL APPLICATION. IF THE APPLICANT IS OTHER THAN A NATURAL PERSON, THE DESIGNATED RESPONSIBLE INDIVIDUAL SHALL HAVE SATISFACTORILY COMPLETED TWELVE CONTINUING EDUCATION UNITS BY A CONTINUING EDUCATION PROVIDER APPROVED BY THE SUPERINTENDENT BEFORE SUBMITTING THE RENEWAL APPLICATION.

U. A LICENSEE WHO EMPLOYS A LOAN ORIGINATOR SHALL COMPLY WITH SECTION 6-991.03.

Sec. 7. Section 6-947, Arizona Revised Statutes, is amended to read:

6-947. Prohibited acts

A. Except for employment verifications and deposit or account verifications, a person in connection with or incidental to the making of any mortgage banking loan or mortgage loan shall not induce, require or permit any document to be signed by a party to the transaction if the document contains any blank spaces to be filled in after it has been signed, except that the party may specifically authorize the licensee or the escrow agent handling the transaction, in writing, to complete blank spaces in certain documents.

B. A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage banking loan or mortgage loan if the person is not licensed pursuant to this article. A mortgage banker shall not pay compensation to, contract with or employ as an independent contractor a person who is acting as a mortgage broker or mortgage banker but who is not licensed under this chapter.

C. A mortgage banker may not commingle monies of borrowers or monies held for the benefit of borrowers with monies of the mortgage banker.

D. A person engaged in the mortgage banking business shall not knowingly advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for a mortgage banking loan or mortgage loan. The charges or rates of charge, if stated, shall be set forth in a clear and concise manner.

E. A mortgage banker shall not request or require a person seeking a mortgage banking loan or mortgage loan, on real property designed principally for the occupancy of from one to four families, in an amount of two hundred

thousand dollars or less to enter into an agreement which prohibits the person from seeking the loan from another source.

F. A mortgage banker shall not, except in good faith, delay or cause delay in the closing of a loan that results in increased costs to a borrower.

G. A mortgage banker shall not record or cause to be recorded any document which would give rise to liability under section 33-420.

H. A person who is employed by a licensee to act in the capacity of a mortgage banker shall not be concurrently employed by any other licensee to act in the capacity of a mortgage banker, except with the prior written approval of all such concurrently employing licensees.

I. A mortgage banker shall not collect compensation for rendering services as a real estate broker or real estate salesman unless both of the following apply:

1. The mortgage banker is licensed pursuant to title 32, chapter 20.

2. The mortgage banker has disclosed to the person from whom the compensation is collected that the mortgage banker is receiving compensation both for mortgage banker services, if applicable, and for real estate broker or real estate salesman services.

J. A licensee shall not accept any assignment of the borrower's wages or salary in connection with activities governed by this article.

K. A mortgage banker shall not, for compensation, either directly or indirectly make or negotiate or offer to make or negotiate a loan of money in an amount of ten thousand dollars or less that is not secured by a mortgage or deed of trust or other lien interest in real property.

L. A mortgage banker shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage banker business.

M. A mortgage banker shall not fail to truthfully account for the monies belonging to a party to a mortgage loan or mortgage banking loan transaction or fail to disburse monies in accordance with his agreements.

N. A mortgage banker shall not record a mortgage or deed of trust if monies are not available for the immediate disbursal to the mortgagor unless, before that recording, the mortgage banker informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay.

O. A mortgage banker shall not require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

P. A MORTGAGE BANKER MUST REASONABLY SUPERVISE THE ACTIVITIES OF A LOAN ORIGINATOR WHO IS LICENSED PURSUANT TO ARTICLE 4 OF THIS CHAPTER AND WHO IS EMPLOYED BY THE MORTGAGE BANKER.

1 Sec. 8. Title 6, chapter 9, Arizona Revised Statutes, is amended by
2 adding article 4, to read:
3 ARTICLE 4. LOAN ORIGINATORS
4 6-991. Definitions
5 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
6 1. "ADMINISTRATIVE OR CLERICAL TASKS" MEANS THE RECEIPT, COLLECTION
7 AND DISTRIBUTION OF INFORMATION COMMON FOR THE PROCESSING OF A LOAN IN THE
8 MORTGAGE INDUSTRY OR COMMUNICATION WITH A BORROWER TO OBTAIN INFORMATION
9 NECESSARY FOR THE PROCESSING OF A LOAN. ADMINISTRATIVE OR CLERICAL TASKS DO
10 NOT INCLUDE HOLDING ONESELF OUT TO THE PUBLIC AS ABLE TO OBTAIN A LOAN.
11 2. "AFFILIATE" MEANS AN ENTITY THAT DIRECTLY OR INDIRECTLY, THROUGH
12 INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH
13 THE ENTITY SPECIFIED.
14 3. "CONTINUING EDUCATION UNIT" MEANS A FIFTY MINUTE PERIOD OF TIME IN
15 A CONTINUING EDUCATION COURSE THAT RELATES TO THE MORTGAGE INDUSTRY OR TO
16 MORTGAGE TRANSACTIONS, INCLUDING COURSES TAKEN TO MAINTAIN RECOGNIZED
17 INDUSTRY DESIGNATIONS.
18 4. "LICENSE" MEANS A LICENSE ISSUED UNDER THIS ARTICLE.
19 5. "LICENSEE" MEANS A PERSON LICENSED UNDER THIS ARTICLE.
20 6. "LOAN ORIGINATOR":
21 (a) MEANS A NATURAL PERSON EMPLOYED BY A MORTGAGE BROKER OR MORTGAGE
22 BANKER WHO EITHER TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION FOR A
23 MORTGAGE BROKER OR MORTGAGE BANKER TO OBTAIN A THIRD PARTY LENDER OR OFFERS
24 OR NEGOTIATES TERMS OF A MORTGAGE LOAN FOR DIRECT OR INDIRECT COMPENSATION OR
25 GAIN OR IN THE EXPECTATION OF DIRECT OR INDIRECT COMPENSATION OR GAIN.
26 (b) INCLUDES A PERSON WHO HOLDS HIMSELF OUT TO THE PUBLIC AS ABLE TO
27 PERFORM ANY OF THESE ACTIVITIES.
28 (c) DOES NOT MEAN A PERSON WHO PERFORMS PURELY ADMINISTRATIVE OR
29 CLERICAL TASKS AND WHO IS EMPLOYED BY A MORTGAGE BROKER OR MORTGAGE BANKER.
30 7. "MORTGAGE BANKER" MEANS A PERSON WHO IS LICENSED PURSUANT TO
31 ARTICLE 2 OF THIS CHAPTER.
32 8. "MORTGAGE BROKER" MEANS A PERSON WHO IS LICENSED PURSUANT TO
33 ARTICLE 1 OF THIS CHAPTER.
34 9. "MORTGAGE LOAN" MEANS A LOAN SECURED BY A MORTGAGE OR DEED OF TRUST
35 OR ANY LIEN INTEREST ON REAL ESTATE LOCATED IN THIS STATE ESTABLISHED WITH
36 THE CONSENT OF THE OWNER OF THE REAL ESTATE.
37 6-991.01. Exemptions
38 THIS ARTICLE DOES NOT APPLY TO:
39 1. A NATURAL PERSON EMPLOYED BY A PERSON WHO DOES BUSINESS UNDER ANY
40 OTHER LAW OF THIS STATE, OR LAW OF ANOTHER STATE WHILE REGULATED BY AN
41 AGENCY OF THE OTHER STATE OR THE UNITED STATES, RELATING TO BANKS, SAVINGS
42 BANKS, TRUST COMPANIES, SAVINGS AND LOAN ASSOCIATIONS, PROFIT SHARING AND
43 PENSION TRUSTS, CREDIT UNIONS, INSURANCE COMPANIES OR CONSUMER LENDERS, OR
44 RECEIVERSHIPS, INCLUDING DIRECTLY OR INDIRECTLY MAKING, NEGOTIATING OR
45 OFFERING TO MAKE OR NEGOTIATE A MORTGAGE LOAN, IF THE MORTGAGE TRANSACTIONS

ARE REGULATED BY THE OTHER LAW OR ARE UNDER THE JURISDICTION OF A COURT. EMPLOYEES OF SUBSIDIARIES AND SERVICE CORPORATIONS OF THESE INSTITUTIONS ARE EXEMPT AND ARE NOT SUBJECT TO THIS ARTICLE IF PREEMPTED BY FEDERAL LAW.

2. A PERSON WHO IS LICENSED PURSUANT TO ARTICLE 1, 2 OR 3 OF THIS CHAPTER.

3. A PERSON WHO IS A RESPONSIBLE INDIVIDUAL AS DESCRIBED IN SECTION 6-903 AND WHO DOES NOT ACT AS A LOAN ORIGINATOR PURSUANT TO ARTICLE 1, 2 OR 3 OF THIS CHAPTER.

4. AN EMPLOYEE OF A COMMERCIAL MORTGAGE BANKER LICENSED PURSUANT TO ARTICLE 3 OF THIS CHAPTER.

5. AN EMPLOYEE OF A PERSON LICENSED PURSUANT TO THIS CHAPTER IF THE LICENSEE AFFIRMS IN WRITING TO THE SUPERINTENDENT THAT THE LICENSEE WILL NOT MAKE OR NEGOTIATE A MORTGAGE LOAN THAT HAS SECURITY IN THE FORM OF A RESIDENTIAL DWELLING OF ONE TO FOUR UNITS.

6. A PERSON WHO, AS SELLER OF REAL PROPERTY, RECEIVES ONE OR MORE MORTGAGES OR DEEDS OF TRUST AS SECURITY FOR A PURCHASE MONEY OBLIGATION.

7. ANY ENTITY SUBJECT TO REGULATION AND SUPERVISION BY A FEDERAL BANKING AGENCY, AND ANY OPERATING SUBSIDIARY OR AFFILIATE OF THE FOREGOING, INCLUDING ANY EMPLOYEE OR EXCLUSIVE AGENT OF ANY SUCH ENTITY.

6-991.02. Prohibited acts

BEGINNING JANUARY 1, 2010:

1. A LOAN ORIGINATOR ACTING ON THE LOAN ORIGINATOR'S OWN BEHALF SHALL NOT ACCEPT ANY MONIES OR DOCUMENTS IN CONNECTION WITH AN APPLICATION FOR A MORTGAGE LOAN.

2. A PERSON IS NOT ENTITLED TO RECEIVE COMPENSATION IN CONNECTION WITH ARRANGING FOR OR NEGOTIATING A MORTGAGE LOAN IF THE PERSON IS NOT LICENSED PURSUANT TO THIS CHAPTER. NOTWITHSTANDING SECTION 6-984, SUBSECTION B, A LOAN ORIGINATOR SHALL NOT PAY COMPENSATION TO, CONTRACT WITH OR EMPLOY AS AN INDEPENDENT CONTRACTOR A PERSON WHO IS ACTING AS A LOAN ORIGINATOR, MORTGAGE BROKER, MORTGAGE BANKER OR COMMERCIAL MORTGAGE BANKER BUT WHO IS NOT LICENSED UNDER THIS CHAPTER.

3. A LOAN ORIGINATOR ACTING ON THE LOAN ORIGINATOR'S OWN BEHALF SHALL NOT ADVERTISE, DISPLAY, DISTRIBUTE, BROADCAST OR TELEVISE, OR CAUSE OR PERMIT TO BE ADVERTISED, DISPLAYED, DISTRIBUTED, BROADCAST OR TELEVISED, IN ANY MANNER, ANY SOLICITATION OF MORTGAGE BUSINESS.

4. A LOAN ORIGINATOR SHALL NOT MAKE, NEGOTIATE OR OFFER TO MAKE OR NEGOTIATE FOR COMPENSATION, EITHER DIRECTLY OR INDIRECTLY, A LOAN THAT IS EITHER:

(a) LESS THAN FIVE THOUSAND DOLLARS.

(b) NOT SECURED BY A MORTGAGE OR DEED OF TRUST OR OTHER LIEN INTEREST IN REAL PROPERTY.

5. A LOAN ORIGINATOR WHO IS EMPLOYED BY A MORTGAGE BROKER OR MORTGAGE BANKER TO ACT IN THE CAPACITY OF THE MORTGAGE BROKER OR MORTGAGE BANKER SHALL NOT BE EMPLOYED CONCURRENTLY BY ANY OTHER MORTGAGE BROKER OR MORTGAGE BANKER.

6. A LOAN ORIGINATOR SHALL NOT COLLECT COMPENSATION FOR RENDERING SERVICES AS A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON LICENSED PURSUANT TO TITLE 32, CHAPTER 20 UNLESS BOTH OF THE FOLLOWING APPLY:

(a) THE LOAN ORIGINATOR IS LICENSED PURSUANT TO TITLE 32, CHAPTER 20.

(b) THE EMPLOYING MORTGAGE BROKER OR MORTGAGE BANKER HAS DISCLOSED TO THE PERSON FROM WHOM THE COMPENSATION IS COLLECTED AT THE TIME A MORTGAGE LOAN APPLICATION IS RECEIVED THAT THE LOAN ORIGINATOR IS RECEIVING COMPENSATION BOTH FOR MORTGAGE BROKER OR MORTGAGE BANKER SERVICES, IF APPLICABLE, AND FOR REAL ESTATE BROKER OR REAL ESTATE SALESPERSON SERVICES.

7. A LOAN ORIGINATOR SHALL NOT ACCEPT ANY ASSIGNMENT OF THE BORROWER'S WAGES OR SALARY IN CONNECTION WITH ACTIVITIES GOVERNED BY THIS ARTICLE.

8. A LOAN ORIGINATOR SHALL NOT RECEIVE OR DISBURSE MONIES IN SERVICING OR ARRANGING A MORTGAGE LOAN.

9. A LOAN ORIGINATOR SHALL NOT MAKE A FALSE PROMISE OR MISREPRESENTATION OR CONCEAL AN ESSENTIAL OR MATERIAL FACT IN THE COURSE OF THE MORTGAGE BROKER OR MORTGAGE BANKER BUSINESS.

10. A LOAN ORIGINATOR SHALL NOT FAIL TO TRUTHFULLY ACCOUNT FOR THE MONIES BELONGING TO A PARTY TO A MORTGAGE LOAN TRANSACTION OR FAIL TO DISBURSE MONIES IN ACCORDANCE WITH THE EMPLOYING MORTGAGE BROKER OR MORTGAGE BANKER AGREEMENTS.

11. A LOAN ORIGINATOR SHALL NOT ENGAGE IN ILLEGAL OR IMPROPER BUSINESS PRACTICES.

12. A LOAN ORIGINATOR SHALL NOT REQUIRE A PERSON SEEKING A LOAN SECURED BY REAL PROPERTY TO OBTAIN PROPERTY INSURANCE COVERAGE IN AN AMOUNT THAT EXCEEDS THE REPLACEMENT COST OF THE IMPROVEMENTS AS ESTABLISHED BY THE PROPERTY INSURER.

13. A LOAN ORIGINATOR SHALL NOT ORIGINATE A MORTGAGE LOAN UNLESS EMPLOYED BY A MORTGAGE BROKER OR MORTGAGE BANKER.

6-991.03. Licensing; renewal; qualifications; application; fees

A. BEGINNING JANUARY 1, 2010, A NATURAL PERSON SHALL NOT ACT AS A LOAN ORIGINATOR UNLESS LICENSED UNDER THIS ARTICLE.

B. BEGINNING JANUARY 1, 2010, THE SUPERINTENDENT SHALL NOT GRANT A LOAN ORIGINATOR LICENSE TO A PERSON, OTHER THAN A NATURAL PERSON. AN APPLICANT FOR AN ORIGINAL LOAN ORIGINATOR'S LICENSE SHALL HAVE DONE BOTH OF THE FOLLOWING:

1. SATISFACTORILY COMPLETED A COURSE OF STUDY FOR LOAN ORIGINATORS APPROVED BY THE SUPERINTENDENT DURING THE YEAR IMMEDIATELY PRECEDING THE TIME OF APPLICATION. THIS PARAGRAPH DOES NOT APPLY IF A PERSON PROVES SATISFACTORILY TO THE DEPARTMENT THAT THE PERSON HAS AT LEAST THREE YEARS OF LOAN ORIGINATOR EXPERIENCE THAT IS IMMEDIATELY PRECEDING THE TIME OF APPLICATION.

2. PASSED A LOAN ORIGINATOR'S EXAMINATION PURSUANT TO SECTION 6-991.07 NOT MORE THAN ONE YEAR BEFORE THE GRANTING OF THE LICENSE.

C. A PERSON SHALL MAKE AN APPLICATION FOR A LICENSE OR RENEWAL OF A LICENSE IN WRITING IN THE MANNER PRESCRIBED BY THE SUPERINTENDENT AND ACCOMPANIED BY THE INFORMATION PRESCRIBED BY THE SUPERINTENDENT.

D. BEGINNING JANUARY 1, 2010, AN APPLICANT FOR RENEWAL OF A LOAN ORIGINATOR LICENSE SHALL HAVE SATISFACTORILY COMPLETED SIX CONTINUING EDUCATION UNITS BEFORE SUBMITTING THE RENEWAL APPLICATION.

E. THE NONREFUNDABLE APPLICATION FEE SHALL ACCOMPANY EACH APPLICATION FOR AN ORIGINAL LOAN ORIGINATOR LICENSE ONLY.

F. A LOAN ORIGINATOR SHALL NOT ADVERTISE FOR OR SOLICIT MORTGAGE BUSINESS IN ANY MANNER WITHOUT USING THE NAME AND LICENSE NUMBER AS ISSUED ON THE EMPLOYING MORTGAGE BROKER'S OR MORTGAGE BANKER'S PRINCIPAL PLACE OF BUSINESS LICENSE AND WITHOUT THE APPROVAL OF THE EMPLOYING MORTGAGE BROKER OR MORTGAGE BANKER.

G. A LICENSE ISSUED PURSUANT TO THIS ARTICLE IS NOT TRANSFERABLE OR ASSIGNABLE.

6-991.04. <u>Issuance of license; notice from employing mortgage broker or mortgage banker; renewal; inactive status; address change; fee</u>

A. THE SUPERINTENDENT, ON DETERMINING THAT AN APPLICANT IS QUALIFIED AND HAS PAID THE REQUIRED FEES, SHALL ISSUE A LOAN ORIGINATOR'S LICENSE TO THE APPLICANT EVIDENCED BY A CONTINUOUS CERTIFICATE. THE SUPERINTENDENT SHALL GRANT OR DENY A LICENSE WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE COMPLETED APPLICATION AND FEES. AN APPLICANT WHO HAS BEEN DENIED A LICENSE MAY NOT REAPPLY FOR A LICENSE BEFORE ONE YEAR FROM THE DATE OF THE PREVIOUS APPLICATION.

B. ON ISSUANCE OF THE LICENSE, THE SUPERINTENDENT SHALL KEEP THE LOAN ORIGINATOR'S LICENSE UNTIL A MORTGAGE BROKER OR MORTGAGE BANKER LICENSED PURSUANT TO THIS CHAPTER EMPLOYS THE LOAN ORIGINATOR AND THE EMPLOYER PROVIDES A WRITTEN NOTICE THAT THE EMPLOYER HAS HIRED THE LOAN ORIGINATOR. THE EMPLOYER SHALL PROVIDE THE NOTICE BEFORE THE LOAN ORIGINATOR BEGINS WORKING FOR THE EMPLOYER. THE NOTICE SHALL BE FROM AN OFFICER OR OTHER PERSON AUTHORIZED BY THE EMPLOYER. THE NOTICE SHALL CONTAIN A REQUEST FOR THE LOAN ORIGINATOR'S LICENSE AND SHALL BE DATED, SIGNED AND NOTARIZED. ON RECEIPT OF THE REQUEST, THE SUPERINTENDENT SHALL FORWARD THE LOAN ORIGINATOR'S LICENSE TO THE EMPLOYING MORTGAGE BROKER OR MORTGAGE BANKER.

C. LICENSES SHALL BE ISSUED FOR A ONE YEAR PERIOD.

D. A LOAN ORIGINATOR SHALL MAKE APPLICATION FOR RENEWAL ON FORMS PRESCRIBED BY THE SUPERINTENDENT. THE APPLICATION SHALL INCLUDE ORIGINAL CERTIFICATES EVIDENCING THE LOAN ORIGINATOR'S SUCCESSFUL COMPLETION OF SIX CONTINUING EDUCATION UNITS DURING THE PRECEDING ONE YEAR PERIOD BY A CONTINUING EDUCATION PROVIDER APPROVED BY THE SUPERINTENDENT.

E. A LOAN ORIGINATOR SHALL PAY THE RENEWAL FEE EVERY YEAR ON OR BEFORE DECEMBER 31. LICENSES NOT RENEWED BY DECEMBER 31 ARE SUSPENDED AND THE LICENSEE SHALL NOT ACT AS A LOAN ORIGINATOR UNTIL THE LICENSE IS RENEWED OR A NEW LICENSE IS ISSUED PURSUANT TO THIS ARTICLE. A PERSON MAY RENEW A

SUSPENDED LICENSE BY PAYING THE RENEWAL FEE PLUS A DOLLAR AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT FOR EACH DAY AFTER DECEMBER 31 THAT A LICENSE RENEWAL FEE IS NOT RECEIVED BY THE SUPERINTENDENT.

F. LICENSES THAT ARE NOT RENEWED BY JANUARY 31 OF EACH YEAR EXPIRE. A LICENSE SHALL NOT BE GRANTED TO THE HOLDER OF AN EXPIRED LICENSE EXCEPT AS PROVIDED IN THIS ARTICLE FOR THE ISSUANCE OF AN ORIGINAL LICENSE.

G. FROM DECEMBER 1 THROUGH DECEMBER 31 OF EACH RENEWAL PERIOD, A LICENSEE MAY REQUEST INACTIVE STATUS FOR THE FOLLOWING LICENSE PERIOD. THE LICENSE SHALL BE PLACED ON INACTIVE STATUS AFTER THE LICENSEE PAYS TO THE SUPERINTENDENT THE INACTIVE STATUS RENEWAL FEE AND SURRENDERS THE LICENSE TO THE SUPERINTENDENT. DURING INACTIVE STATUS, AN INACTIVE LICENSEE SHALL NOT ACT AS A LOAN ORIGINATOR. A LICENSEE MAY NOT BE ON INACTIVE STATUS FOR MORE THAN TWO CONSECUTIVE RENEWAL PERIODS IN ANY TEN YEAR PERIOD. THE LICENSE EXPIRES IF THE LICENSEE VIOLATES THIS SUBSECTION.

H. AT RENEWAL AN INACTIVE LICENSEE MAY RETURN TO ACTIVE STATUS BY DOING ALL OF THE FOLLOWING:

1. PROVIDING THE SUPERINTENDENT WITH EVIDENCE THAT THE LICENSEE HAS MET THE REQUIREMENTS OF SECTION 6-991.03, SUBSECTION B.

2. MAKING A WRITTEN REQUEST TO THE SUPERINTENDENT FOR REACTIVATION.

3. PAYING THE ANNUAL LICENSING FEE.

4. PROVIDING THE SUPERINTENDENT WITH PROOF THAT THE LICENSEE MEETS ALL OTHER REQUIREMENTS FOR ACTING AS A LOAN ORIGINATOR.

I. THE EMPLOYING MORTGAGE BROKER OR MORTGAGE BANKER SHALL KEEP AND MAINTAIN AT THE PRINCIPAL PLACE OF BUSINESS IN THIS STATE THE LOAN ORIGINATOR'S LICENSE DURING THE LOAN ORIGINATOR'S EMPLOYMENT. A COPY OF THE LOAN ORIGINATOR'S LICENSE SHALL BE AVAILABLE FOR PUBLIC INSPECTION DURING REGULAR BUSINESS HOURS.

J. A LOAN ORIGINATOR SHALL IMMEDIATELY NOTIFY THE SUPERINTENDENT OF A CHANGE IN THE LOAN ORIGINATOR'S RESIDENCE ADDRESS. THE SUPERINTENDENT SHALL ENDORSE THE CHANGE OF ADDRESS ON THE LICENSE FOR A FEE TO BE DETERMINED BY THE SUPERINTENDENT.

K. WITHIN FIVE BUSINESS DAYS AFTER ANY LICENSEE'S EMPLOYMENT TERMINATION, THE EMPLOYING MORTGAGE BROKER OR MORTGAGE BANKER SHALL DO BOTH OF THE FOLLOWING:

1. NOTIFY THE SUPERINTENDENT OF THE LICENSEE'S TERMINATION.

2. RETURN THE LICENSE TO THE SUPERINTENDENT.

6-991.05. <u>Denial, suspension or revocation of licenses</u>

A. THE SUPERINTENDENT MAY DENY A LICENSE TO A PERSON OR SUSPEND OR REVOKE A LICENSE IF THE SUPERINTENDENT FINDS THAT AN APPLICANT OR LICENSEE:

1. IS NOT A PERSON OF HONESTY, TRUTHFULNESS OR GOOD CHARACTER.

2. HAS VIOLATED ANY LAW, RULE OR ORDER.

3. HAS BEEN CONVICTED IN ANY STATE OF A FELONY OR ANY CRIME OF BREACH OF TRUST OR DISHONESTY.

4. HAS HAD A FINAL JUDGMENT ENTERED AGAINST THE APPLICANT OR LICENSEE IN A CIVIL ACTION ON GROUNDS OF FRAUD, DECEIT OR MISREPRESENTATION, AND THE

1 CONDUCT ON WHICH THE JUDGMENT IS BASED INDICATES THAT IT WOULD BE CONTRARY TO
2 THE INTEREST OF THE PUBLIC TO PERMIT THE PERSON TO BE LICENSED.
3 5. HAS HAD AN ADMINISTRATIVE AGENCY OF THIS STATE, THE FEDERAL
4 GOVERNMENT OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES ENTER AN
5 ORDER AGAINST THE APPLICANT OR LICENSEE INVOLVING FRAUD, DECEIT OR
6 MISREPRESENTATION, AND THE FACTS RELATING TO THE ORDER INDICATE THAT IT WOULD
7 BE CONTRARY TO THE INTEREST OF THE PUBLIC TO PERMIT THE PERSON TO BE
8 LICENSED.
9 6. HAS MADE A MATERIAL MISSTATEMENT OR SUPPRESSED OR WITHHELD
10 INFORMATION ON THE APPLICATION FOR A LICENSE OR ANY DOCUMENT REQUIRED TO BE
11 FILED WITH THE SUPERINTENDENT.
12 B. IF A LICENSEE OR APPLICANT UNDER THIS ARTICLE IS INDICTED OR
13 INFORMED AGAINST FOR FORGERY, EMBEZZLEMENT, OBTAINING MONEY UNDER FALSE
14 PRETENSES, EXTORTION, CRIMINAL CONSPIRACY TO DEFRAUD OR A SIMILAR OFFENSE,
15 AND A CERTIFIED COPY OF THE INDICTMENT OR INFORMATION OR OTHER PROPER
16 EVIDENCE OF THE INDICTMENT OR INFORMATION IS FILED WITH THE SUPERINTENDENT,
17 THE SUPERINTENDENT MAY SUSPEND THE LICENSE OR REFUSE TO GRANT A LICENSE TO AN
18 APPLICANT PENDING TRIAL ON THE INDICTMENT.
19 6-991.06. Loan originator examination committee; membership
20 A. THE SUPERINTENDENT SHALL ESTABLISH A LOAN ORIGINATOR EXAMINATION
21 COMMITTEE TO ESTABLISH AND PERIODICALLY UPDATE STANDARDS FOR PASSING AN
22 EXAMINATION FOR LOAN ORIGINATORS.
23 B. THE COMMITTEE SHALL CONSIST OF FIVE MEMBERS WHO ARE APPOINTED BY
24 THE SUPERINTENDENT. THE MEMBERS SHALL SERVE STAGGERED TWO YEAR TERMS. FOUR
25 OF THE MEMBERS SHALL BE MORTGAGE BROKER LICENSEES AND SHALL BE APPOINTED FROM
26 NOMINATIONS SUBMITTED BY MORTGAGE BROKER LICENSEES. ONE OF THE MEMBERS SHALL
27 BE AN EMPLOYEE OF THE DEPARTMENT. THE COMMITTEE SHALL ELECT A CHAIRPERSON.
28 C. LICENSEES WHO SERVE AS MEMBERS OF THE COMMITTEE SHALL NOT RECEIVE
29 COMPENSATION.
30 6-991.07. Examination; fee; definition
31 A. EACH APPLICANT FOR AN ORIGINAL LOAN ORIGINATOR LICENSE, BEFORE
32 ISSUANCE OF THE LICENSE, SHALL TAKE AND PASS AN EXAMINATION GIVEN UNDER THE
33 SUPERVISION OF THE DEPARTMENT. THE EXAMINATION MUST REASONABLY EXAMINE THE
34 APPLICANT'S KNOWLEDGE OF ALL OF THE FOLLOWING:
35 1. THE OBLIGATIONS BETWEEN PRINCIPAL AND AGENT.
36 2. THE APPLICABLE CANONS OF BUSINESS ETHICS.
37 3. THIS ARTICLE AND THE RULES ADOPTED UNDER THIS ARTICLE.
38 4. THE ARITHMETICAL COMPUTATIONS COMMON TO MORTGAGE BROKERAGE.
39 5. THE PRINCIPLES OF REAL ESTATE LENDING.
40 6. THE GENERAL PURPOSES AND LEGAL EFFECT OF MORTGAGES, DEEDS OF TRUST
41 AND SECURITY AGREEMENTS.
42 7. THE TERMS AND CONDITIONS OF CONFORMING AND NONCONFORMING
43 RESIDENTIAL MORTGAGE PRODUCTS.
44 8. THE PRINCIPLES OF APPRAISAL INDEPENDENCE.
45 B. THE EXAMINATION IS SUBJECT TO THE SUPERINTENDENT'S APPROVAL.

C. THE DEPARTMENT SHALL SUPERVISE THE ADMINISTRATION OF THE EXAMINATION TO APPLICANTS FOR LICENSES AT LEAST ONCE EVERY SIX MONTHS. THE DEPARTMENT SHALL REASONABLY PRESCRIBE THE TIME, PLACE AND CONDUCT OF EXAMINATIONS AND COLLECT A FEE IN AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT FOR ADMINISTRATION OF THE EXAMINATION TO BE ASSESSED TO ALL PERSONS TAKING THE EXAMINATION. THE TEST MAY BE GIVEN IN EITHER WRITTEN OR ELECTRONIC FORMAT.

D. AN APPLICANT MAY NOT TAKE THE EXAMINATION MORE THAN TWO TIMES WITHIN A TWELVE MONTH PERIOD.

E. ALL EXAMINATIONS SHALL BE GIVEN, CONDUCTED AND GRADED IN A FAIR AND IMPARTIAL MANNER AND WITHOUT UNFAIR DISCRIMINATION BETWEEN INDIVIDUALS EXAMINED. THE COMMITTEE SHALL INFORM THE APPLICANT OF THE RESULT OF THE EXAMINATION WITHIN THIRTY DAYS OF THE EXAMINATION.

F. THE SUPERINTENDENT SHALL DETERMINE THE FEE FOR EACH EXAMINATION.

G. FOR THE PURPOSES OF THIS SECTION, "APPLICANT" MEANS A PERSON WHO HAS SUBMITTED A COMPLETED APPLICATION IN THE FORM PRESCRIBED BY THE SUPERINTENDENT.

6-991.08. Noncompliance not to affect validity of loan

FAILURE TO COMPLY WITH THIS ARTICLE DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY DEBT, MORTGAGE, DEED OF TRUST OR ANY OTHER LIEN INTEREST ON REAL ESTATE. A PERSON ACQUIRING A MORTGAGE LOAN OR ANY INTEREST IN A MORTGAGE LOAN AS MORTGAGEE OR BENEFICIARY OR AS AN ASSIGNEE, HOLDER OR TRANSFEREE OR AS A PLEDGEE OR THE HOLDER OF A SECURITY INTEREST IS NOT REQUIRED TO ASCERTAIN WHETHER A VIOLATION OF THIS ARTICLE HAS OCCURRED.

Sec. 9. Initial terms of members of the loan originator examination committee

A. Notwithstanding section 6-991.06, Arizona Revised Statutes, as added by this act, the initial terms of the members of the loan originator examination committee are:

1. One term ending January 15, 2010.
2. Two terms ending January 15, 2011.
3. Two terms ending January 15, 2012.

B. The superintendent shall make all subsequent appointments as prescribed by statute.

APPROVED BY THE GOVERNOR JULY 7, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 7, 2008.