Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 174

HOUSE BILL 2079

AN ACT

AMENDING SECTIONS 6-903 AND 6-943, ARIZONA REVISED STATUTES; RELATING TO MORTGAGE BROKERS AND MORTGAGE BANKERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. 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 the person is not licensed under this article. A person who brokers only commercial mortgage loans shall obtain either a mortgage broker license or a commercial mortgage broker license. A person who brokers residential mortgage loans shall obtain a mortgage broker license.

B. The superintendent shall not grant a mortgage broker's license or a commercial 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.

C. An applicant for an original mortgage broker's license shall:

1. Have not less than three years' experience as a mortgage broker~~,~~ OR LOAN ORIGINATOR 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.~~

D. An applicant for an original commercial mortgage broker's license shall:

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

2. Have made in the past or intend to make or negotiate or offer to make or negotiate commercial mortgage loans.

3. Provide the superintendent with the following:

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

(b) If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

(c) Notes to the financial statement if applicable.

E. Notwithstanding subsection D, paragraph 3 of this section, commercial mortgage broker licensees and commercial mortgage broker license applicants whose own resources are derived exclusively from correspondent contracts with institutional investors shall provide the superintendent with a current financial statement or that of its parent company prepared according to generally accepted accounting principles, including:

1. A balance sheet prepared within the immediately preceding six months and certified by the licensee. The superintendent may require a more recent balance sheet.

2. If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

3. Notes to the financial statement if applicable.

F. 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.

G. 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.

H. 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 C or D of this section for a licensee.

I. 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.

J. Every person licensed as a mortgage broker or a commercial mortgage broker shall deposit with the superintendent, before doing business as a mortgage broker or a commercial 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 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 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.

K. 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.

L. For the purposes of subsection K 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 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.

M. 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 J of this section. The superintendent may accept any of the following as an alternative to cash:

1. Certificates of deposits or investment certificates 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 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 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.

N. 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.

O. 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.

P. 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 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.

Q. 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.

R. 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 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.

S. The licensee is liable for any damage caused by any of the licensee's employees while acting as an employee of the licensee.

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

U. 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.

V. 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. An applicant for renewal of a commercial mortgage broker license is not subject to the continuing education requirements prescribed by this article.

W. A licensee who employs a loan originator shall comply with section 6-991.03.

Sec. 2. 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~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS.

(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~~ ONE HUNDRED 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 this article. For the purposes of this article, an employee does not include an independent contractor. For the purposes of this article, 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 have not less than three years' experience in the business of making mortgage banking loans or equivalent experience in a related business.

G. A licensee shall notify the superintendent that its responsible individual will cease to be in active management of the licensee within ten days of learning that fact. Not more than ninety days after the superintendent receives the notice, the licensee shall place itself under the active management of a qualified responsible person and notify the superintendent. If the licensee is not placed under active management of a qualified responsible individual and if notice is not received by the superintendent within the ninety day period, the license of the licensee expires.

H. Every person licensed as a mortgage banker shall deposit with the superintendent, before doing business as a mortgage banker, 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 directors, officers, members, partners, trustees and employees, with this article. Only one bond is required for a person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or are members of the firm, association or corporation. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee and to this state for the benefit of any injured person. The coverage shall be maintained in the minimum amount prescribed in this subsection, computed on a base consisting of the total assets of the licensee plus the unpaid balance of loans ~~which~~ it has 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 the action and shall provide copies of all documents relating to the action to the superintendent on request.

I. Notwithstanding subsection H of this section, the bond required shall be twenty-five thousand dollars for licensees whose investors are limited solely to institutional investors.

J. For THE purposes of subsection I 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 BANKER funds ~~to a mortgage banker 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 banker or in a transaction that has been directly or indirectly arranged or negotiated by a mortgage banker.

K. 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 amount prescribed in subsection H or I of this section, as applicable. The superintendent may accept any of the following as an alternative to cash:

1. Certificates of deposit 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.

L. 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.

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 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~~ ON 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.

APPROVED BY THE GOVERNOR APRIL 4, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2012.

Passed the House February 9, 2012

by the following vote: 37 Ayes,

18 Nays, 4 Not Voting 1 vacant

Speaker of the House

Chief Clerk of the House

Passed the Senate March 22, 2012

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____ day of

_____

at _____ o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2079

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

March 29, 2012,

by the following vote: 38 Ayes,

15 Nays, 7 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of March, 2012,

at 11:30 o'clock A M.

Secretary to the Governor

Approved this 4th day of

April, 2012,

at 1:35 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4th day of April, 2012,

at 3:32 o'clock P M.

Ken Bennett

Secretary of State

H.B. 2079