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CHAPTER 58.

 REGISTRATION OF MORTGAGE LOAN BROKERS

**SECTION 40‑58‑10.** Short title; residential mortgage broker requirements.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) This chapter may be cited as the Licensing Requirements Act of Certain Brokers of Mortgages on Residential Real Property.

(B) No person, partnership, corporation, banking organization, or other organization shall broker a residential mortgage as defined in this chapter unless the broker of the mortgage:

(1) is an exempt person or organization as defined by Section 40‑58‑20(5); or

(2) has complied with the provisions of this chapter.

**SECTION 40‑58‑20.** Definitions.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

As used in this chapter:

(1) “Mortgage” means a loan to a natural person made primarily for personal, family, or household use primarily secured by a mortgage on residential real property.

(2) “Residential real property” means real property located in this State upon which there is located or there is to be located one or more single family, owner‑occupied dwellings or dwelling units.

(3) “Mortgage broker” means a person or organization in the business of soliciting, processing, placing, or negotiating mortgages for others or offering to process, place, or negotiate mortgages for others. Mortgage broker also includes a person or organization who brings borrowers or lenders together to obtain mortgages or renders a settlement service as described in 24 CFR Part 3500.2(b).

(4) “Soliciting, processing, placing, or negotiating a mortgage loan” means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage, assisting or offering to assist in the processing of an application for a mortgage, soliciting or offering to solicit a mortgage on behalf of a third party, or negotiating or offering to negotiate the terms or conditions of a mortgage with a lender on behalf of a third party.

(5) “Exempt person or organization” means:

(a) a bank, bank holding company, credit union, savings and loan association, savings and loan association holding company, their affiliates and subsidiaries, a supervised licensed lender under Title 37 and a restricted lender under Title 34 and their affiliates and subsidiaries, a Department of Housing and Urban Development or Federal Housing Administration approved mortgagee authorized, chartered, licensed, or approved under the laws of this State or of the United States or an instrumentality of them; or persons or organizations which sell or place all of their conventional mortgages on real property with federally insured and/or regulated financial institutions including, but not limited to, banks, savings and loan associations, and credit unions.

(b) an attorney at law licensed to practice law in South Carolina who is not engaged principally in negotiating mortgages when the attorney renders services in the course of his practice as an attorney at law;

(c) a person employed by an organization defined in subitem (a) of this item;

(d) title company which is qualified to issue title insurance, directly or through its agents.

(6) “Licensee” means a person or organization who is licensed pursuant to Section 40‑58‑50 which engages in the business of soliciting, processing, placing, or negotiating mortgages for others or offering to process, place, or negotiate mortgages for others. Licensee includes mortgage brokers as defined in item (3) and originators as defined in item (14).

(7) “Administrator” means the Administrator of the Department of Consumer Affairs of this State.

(8) “RESPA” means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq., as amended.

(9) “Recasting” means a promise for an individual to recoup a home sold to a third party with the intent of the original seller to rent back the property for a specific time at which the original seller will have the option to purchase the property back at a specific price. The specific period of time would normally be one year.

(10) “HUD” means the Department of Housing and Urban Development.

(11) “Department” means the South Carolina Department of Consumer Affairs.

(12) “Regular business hours” means open for business not less than thirty hours a week, Monday through Friday.

(13) “Satellite office” means a location at which a mortgage broker may conduct mortgage broker business other than at a location that is open for regular business hours and is not required to be staffed full time by one or more employees who have the authority to contract on behalf of the broker and to accept service on behalf of the broker.

(14) “Originator” means an employee of a mortgage broker whose primary job responsibilities include direct contact with and informing mortgage applicants of the rates, terms, disclosure, and other aspects of the mortgage, including accepting or offering to accept applications for mortgages. It does not mean an employee, including processors, whose job responsibilities are limited to clerical and administrative tasks and who does not solicit borrowers or negotiate the rates, terms, disclosure, or other aspects of a mortgage on behalf of the employer which do not require licensure.

(15) “Processor” means an employee of a mortgage broker whose primary job responsibilities are mortgage processing and may include direct contact with applicants but does not include informing applicants of rates, terms, disclosure, or solicitation of mortgages.

**SECTION 40‑58‑30.** Mortgage brokers and originators to be licensed; exceptions.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) A mortgage broker, as defined in Section 40‑58‑20(3), or an originator, as defined in Section 40‑58‑20(14), may not engage in the business of processing, placing, or negotiating a mortgage or offering to process, place, or negotiate a mortgage in this State without first being licensed with the administrator.

(B) It is unlawful for a person to employ, to compensate, or to appoint as its agent an originator unless the originator is licensed pursuant to this chapter. The license of an originator is not effective during any period when that person is not employed by a mortgage broker licensed pursuant to this chapter. When an originator ceases to be employed by a licensed mortgage broker, the originator and the mortgage broker by whom that person was employed shall promptly notify the department in writing. An originator must not be employed simultaneously by more than one mortgage broker.

(C) Notwithstanding subsection (A) of this section, the provisions of this chapter do not apply to an exempt person or organization as defined in Section 40‑58‑20(5).

**SECTION 40‑58‑40.** Bond and security requirements.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

A person or organization may not offer or agree to offer mortgage brokerage services in this State without first depositing and continuously maintaining the amount of ten thousand dollars in cash or securities approved by the administrator or a bond in the amount of ten thousand dollars executed by a surety company authorized by the laws of this State to transact business within this State. Continuously maintaining a bond may be considered evidence of financial responsibility for a person or organization that offers or agrees to offer mortgage brokerage services. The bond must be executed to the State of South Carolina and must be for the use of the State and for any consumers who may have a cause of action against the mortgage broker.

**SECTION 40‑58‑50.** Application for licensure; applicant work experience and education requirements; exceptions.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) An application to become licensed as a mortgage broker or an originator must be in writing, under oath, and in a form prescribed by the department. The application must contain the name and complete business and residential address or addresses of the applicant. If the applicant for a mortgage broker license is a partnership, association, limited liability company, corporation, or other form of business organization, the names and complete business and residential addresses of each member, director, and principal officer and a list of all employees who engage in direct brokerage activity including, but not limited to, originators.

(B)(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the department and the descriptions of the business activities, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a criminal records check. The application must be accompanied by a nonrefundable fee, payable to the department, of five hundred fifty dollars, in addition to the actual cost of obtaining state criminal history record checks by the South Carolina Law Enforcement Division.

(2) An applicant for a mortgage broker’s license must have at least two years’ experience working as an originator under the supervision of a mortgage broker before an initial license is issued.

(a) In lieu of a showing of two years’ experience, an applicant may show proof of two years’ employment with a federally insured depository institution, or a VA, FHA, or HUD approved mortgagee during which the applicant was actively engaged in originating residential mortgages.

(b) In lieu of one of the required years’ experience, an applicant may show proof of the equivalent of six or more semester hours of satisfactorily completed course work in real estate finance, real estate law, or similar course work counting toward the successful completion of a degree that is baccalaureate level or more advanced with a major or minor in finance, accounting, business administration, real estate finance economics, or similar baccalaureate or more advanced degree, approved by the administrator or the administrator’s designee, from an accredited college or university.

(c) However, all mortgage loan brokers properly licensed as a mortgage loan broker before October 1, 1998, may act as mortgage brokers after that date without regard to the experience or education requirement of this subsection if they maintain compliance with the continuing professional education requirements of Section 40‑58‑67 and otherwise comply with this chapter.

(C) The application for an originator license must designate the employing mortgage broker and must include descriptions of the business activities, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a criminal records check. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining state criminal history record checks by the South Carolina Law Enforcement Division.

(D) An applicant for an originator’s license must be at least eighteen years of age and must have at least six months of experience in residential mortgage lending or complete eight hours of continuing education within ninety days of employment. Additionally, all originators properly licensed before April 1, 2005, may act as originators after that date without regard to the experience or education requirement of this subsection if they maintain compliance with the continuing professional education requirements of Section 40‑58‑67 and otherwise comply with this chapter.

**SECTION 40‑58‑55.** Refusal to license applicant or renew license; grounds.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) Upon request for a contested case hearing by a person whose application for a license or renewal of a license has been denied, the Administrative Law Court may review the determination by the department that the applicant or his agent has:

(1) violated a provision of this chapter or an order of the department;

(2) withheld material information in connection with an application for a license or its renewal, or made a material misstatement in connection with the application;

(3) been convicted of a felony or of an offense involving breach of trust, moral turpitude, fraud, or dishonest dealing within the past ten years.

(B) A person who was in business as a mortgage broker or is an agent of a broker before October 1, 1998, and who has been convicted of a felony or an offense involving breach of trust, moral turpitude, fraud, or dishonest dealing within the past ten years may continue in business as a mortgage broker or agent, but if a mortgage broker or an agent of a broker is convicted of an offense enumerated in item (3) of subsection (A) on or after October 1, 1998, that person is subject to the provisions of this chapter.

**SECTION 40‑58‑60.** Issuance of license; posting copy of license; transfer or assignment of license.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) Upon the filing of an application for a license, if the department finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members if the applicant is a copartnership, association, or limited liability company, and of the officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter, it shall license the applicant and issue a license. If the department does not so find, it shall refuse to license the applicant and shall notify him of the denial.

(B) Upon the receipt of the license, the licensee is authorized to engage in the business for which the license was issued.

(C) Each license issued to a licensee must state the address or addresses at which the business is to be conducted and must state fully the name of the licensee and the date of the license. A copy of the license must be posted prominently in each place of business of the licensee. The license is not transferable or assignable.

**SECTION 40‑58‑65.** Maintaining, availability, and examination of records; confidentiality; physical presence of mortgage broker in state; official place of business.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) A mortgage broker licensed pursuant to this chapter must maintain at his usual place of business books, records, and documents pertaining to the business conducted, to enable the department to determine compliance with this chapter. A mortgage broker with two or more licensed offices may consolidate the records at any one of the licensed offices. The records must be available for examination to the administrator or his designee upon request. Books and records must be maintained for at least three years.

(B) A mortgage broker doing business in this State shall maintain a sufficient physical presence in this State and his records must be maintained at the licensed location in this State. At a minimum, the broker shall maintain an official place of business open during regular business hours, staffed by one or more licensees who have the authority to contract on behalf of the broker and to accept service on behalf of the broker. If the official place of business is not open for business within the hours of 8:30 A.M. until 5:00 P.M., Monday through Friday, the broker shall notify the department in writing of the business hours maintained by the broker’s official place of business.

(C) A licensed mortgage broker with an official place of business within South Carolina also may maintain one or more branch or satellite offices if the:

(1) mortgage broker notifies the department in writing ten days before the opening of a satellite office of the location of the branch or satellite office and notifies the department that all records from the branch or satellite office are stored in a main or branch location in this State which is staffed by one or more employees during regular business hours;

(2) records of any pending mortgage application or records in which a loan closing is still in process are made available at the mortgage broker’s main or branch location as provided in item (1) to the administrator or his designee within two business days of a written request delivered by facsimile transmission, mail, or hand‑delivery by the administrator or his designee;

(3) broker notifies the department in writing within two business days of closing a branch or satellite office.

(D) The department may examine the books and records of a mortgage broker and other specified documents to determine whether there has been substantial compliance with this chapter. Unless there is reason to believe a violation of this chapter has occurred, examinations must be limited to one each year. Records and information obtained by the department during an examination are confidential and the department must certify that it is in compliance with the Right to Financial Privacy Act (RFPA).

(E) If the mortgage broker fails to notify the department of the existence or closing of a branch or satellite office, the actual operating hours of the main or branch offices where records are kept, or the whereabouts of its records, the broker is subject to a penalty of not less than fifty dollars and not more than two hundred fifty dollars. If after the assessment of a fine within a one‑year period, the administrator finds that additional violations of this section are both intentional and repeated, the mortgage broker is subject to all of the remedies for violations of this chapter set forth in Section 40‑58‑80.

**SECTION 40‑58‑67.** Continuing professional education; required hours; reporting; course approval by panel; penalty for failure to complete requirements.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A)(1) Effective for license years beginning after September 30, 1998, for licensed mortgage brokers and after March 31, 2005, for licensed originators, licensees must complete at least eight hours of continuing professional education annually. If the licensed mortgage broker is a sole proprietorship or partnership, any owners and partners must complete the required eight hours of continuing professional education annually. If the licensed mortgage broker is a limited liability company or corporation, any member or president, chief executive officer, or other officer who has ownership interest of twenty‑five percent or greater and who actively participates in the broker entity must complete the required eight hours of continuing professional education annually. Up to eight hours of continuing professional education may be carried forward from one year to the next year; for the license year beginning October 1, 1998, up to eight hours of continuing professional education taken in the preceding twelve months may be carried forward. The continuing professional education completed must be reported to the department annually on a form approved by it showing the date and title of the courses taken, the teacher or sponsor of the course taken, and the hours of continuing professional education claimed for the course. If the course is taught in a classroom setting, fifty minutes of classroom contact equal one hour of continuing professional education. Course sponsors must maintain records of attendees for two years after the course. As used in this chapter, “actively participates” means engaging in direct brokering activity as defined in Section 40‑58‑20(3) and (4).

(2) Documentation of attendance at the courses or correspondence courses completed must be maintained by the mortgage broker for all licensees and shall consist of a certificate of completion issued by the teacher or sponsor of the course showing the recommended number of hours of continuing professional education. This documentation is subject to inspection by the department for up to two years after the date of the course. Courses offered by the National Association of Mortgage Brokers, the South Carolina Mortgage Brokers Association, or the department or courses related to real estate law or related law topics, appraisals, mortgage lending, financial management, financial planning, or mortgage processing qualify for continuing professional education. The department shall offer continuing professional education courses to assist mortgage brokers in obtaining the continuing professional education required by this chapter.

(B) The department shall appoint two mortgage brokers and one representative of the department to a panel for two‑year terms to approve any courses questioned as to their qualifications as continuing professional education. The panel may conduct its meetings via conference call. The department shall develop a questionnaire to ascertain the interest and background of potential members of this panel.

(C) If a licensee fails to complete his continuing professional education in a timely manner, his license shall expire and the licensee shall pay a penalty not in excess of one hundred dollars in order to renew the license.

(D) However, the licensee may request an administrative hearing to appeal the expiration of his license for failure to complete continuing professional education requirements. A license may be renewed without penalty within thirty days after the expiration if the licensee completes his professional education requirements.

**SECTION 40‑58‑70.** Prohibited activities.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

A licensee may not:

(1) misrepresent the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage or a mortgagor to take a mortgage. This includes presenting the broker in the guise of a lender or pursuing a course of misrepresentation through agents or otherwise;

(2) intentionally misrepresent or conceal a material factor, term, or condition of a transaction to which he is a party, pertinent to an applicant for a mortgage or a mortgagor;

(3) engage in a transaction, practice, or course of business which is unconscionable in light of the regular practices of a mortgage broker, or which operates a fraud upon a person, in connection with the making of or purchase or sale of a mortgage;

(4) fail to use due diligence and make reasonable efforts to procure a mortgage on behalf of a borrower;

(5) collect any third party fees before a conditional mortgage commitment is obtained by the mortgage broker with the exception of normal processing expenses associated with the making of mortgages as authorized or allowed by FNMA, FHLMC, FHA, VA, or any additional fees authorized or allowed by the department;

(6) engage in recasting unless the applicant obtains the advice and counsel of a licensed attorney who is independent to the transaction. A party to a transaction, other than the consumer, may not recommend, retain, or influence the selection of independent counsel. An applicant for recasting shall provide to the broker a document identifying the applicant, provide a brief summary of the proposed transaction, and a written statement from an attorney certifying that the applicant has been advised of the potential consequences of recasting.

**SECTION 40‑58‑75.** Disclosure and itemization of charges; fees.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) Within three business days of the receipt of an application for a mortgage, the broker must disclose in a statement the total estimated charges to the borrower for the mortgage and an itemization of the charges provided if required under RESPA. The disclosure is considered delivered when deposited with United States Postal Service for first class delivery.

(B) A person may not earn a mortgage broker’s fee unless the person meets the requirements of this chapter, is authorized to conduct mortgage brokerage services by this chapter, or is exempt from the requirements of this chapter.

(C) All fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker as required by RESPA.

**SECTION 40‑58‑78.** Loan agreement disclosures; penalties; liability.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) A loan agreement with a mortgage broker or originator must contain an explicit statement that:

(1) the mortgage broker or originator is acting as the agent of the borrower in providing brokerage services to the borrower;

(2) when acting as agent for the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or originator is authorized to act as an agent for any other person, the brokerage agreement must contain a statement of that fact and identification of that person;

(3) a detailed description of the services the mortgage broker or originator agrees to perform for the borrower, and a good faith estimate of any fees the mortgage broker or originator will receive for those services, whether paid by the borrower, the institutional lender, or both; and

(4) a clear and conspicuous statement of the conditions under which the borrower is obligated to pay for the services rendered under the agreement.

(B) If a mortgage broker or originator violates the provisions of subsection (A), the borrower may recover from the mortgage broker or originator charged with the violation:

(1) a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction;

(2) fees paid by the borrower to the mortgage broker or originator for services rendered by the agreement; and

(3) actual costs, including attorney’s fees, for enforcing the borrower’s rights under the agreement.

(C) No mortgage broker or originator charged with the violation may be held liable in an action brought under this section for a violation if the mortgage broker or originator charged with the violation shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

**SECTION 40‑58‑80.** Cease and desist orders; penalties; revocation of license.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A) Upon a finding that an action of a licensee may be in violation of this chapter, or of a law or regulation of this State or of the federal government or an agency of either, the department may file a request for a contested case hearing with the Administrative Law Court seeking an order to require the licensee to cease and desist from the action.

(B) If an administrative law judge issues an order requiring the licensee to cease and desist from the action and the licensee fails to appeal the cease and desist order and continues to engage in the action in violation of the order, the licensee is subject to a penalty of not less than one thousand or more than two thousand five hundred dollars for each action the licensee takes in violation of the order. The penalty provision of this section is in addition to and not instead of other provisions of law applicable to a licensee.

(C) The administrative law judge, upon a finding that a licensee has engaged intentionally or repeatedly in a course of conduct in violation of this chapter, may revoke the license temporarily or permanently in its discretion after reasonable notice and an opportunity to be heard and may increase the mortgage broker’s required bond up to a maximum of twenty‑five thousand dollars to ensure that the public is protected adequately. The administrative law judge also may impose upon persons violating the provisions of this chapter administrative fines of not more than five hundred dollars for each offense or not more than five thousand dollars for the same set of transactions or occurrences. Each violation constitutes a separate offense. If it is determined that the required bond must be increased, the administrative law judge shall state in writing the reasons for the increase and immediately serve it upon the mortgage broker and the department. The mortgage broker shall provide the new bond within thirty days or the department shall revoke the license of the mortgage broker.

(D) A person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(E) Nothing in this chapter limits a statutory or common law right of a person to bring an action in a court for an act or the right of the State to punish a person for a violation of a law.

(F) The administrator of the department may suspend the right of an individual to engage in mortgage broker activity after finding that an originator or other employee of a licensed mortgage broker has failed to comply with a provision of this chapter. After an action by the administrator pursuant to this section, the originator or other employee of a licensed mortgage broker may request a contested case hearing before the Administrative Law Court.

**SECTION 40‑58‑90.** Appeals.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

All appeals are to be made pursuant to the Administrative Procedures Act and the rules governing practice before the Administrative Law Court.

**SECTION 40‑58‑100.** Authority of department to promulgate regulations.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

The department may promulgate regulations necessary to effectuate the purposes of this chapter.

**SECTION 40‑58‑110.** License application and renewal fees; term of license; late renewals.

[Section effective until January 1, 2010. See, also, section effective January 1, 2010.]

(A)(1) In addition to the initial nonrefundable license application fee of five hundred fifty dollars required by Section 40‑58‑50, first time mortgage broker licensees also shall pay a one‑time, nonrefundable processing fee of two hundred dollars. Thereafter, a mortgage broker licensee shall pay an annual nonrefundable renewal fee of five hundred fifty dollars. A mortgage broker licensee shall pay an initial nonrefundable fee of one hundred fifty dollars and, thereafter, a nonrefundable renewal fee of one hundred fifty dollars for each branch or satellite location.

(2) The initial nonrefundable license fee is fifty dollars for an originator license, and fifty dollars, nonrefundable, for a renewal license. In addition, all licensees must pay the cost of obtaining state criminal history record checks as the department may require. The broker shall notify the department in writing ten days before opening a new, official branch or satellite location. No initial fee is required when the licensee notifies the department of a change in address for an official branch or satellite location.

(B) The term of each license is one year. Licenses issued under this chapter expire on September thirtieth each year for mortgage brokers and March thirty‑first for originators and must be renewed in accordance with the provisions of this section.

(C) Failure to renew a license within thirty days of its expiration results in the license being canceled by the department requiring the licensee to complete the initial licensing process, including a criminal records check. A license renewed within thirty days of expiration must be accompanied by a late penalty of two hundred fifty dollars for mortgage brokers and twenty‑five dollars for originators in addition to the nonrefundable renewal fee. All renewable applications must contain information required by the department. All fees collected by the department pursuant to this chapter must be used to implement the provisions of this chapter.