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CHAPTER 58.

LICENSING OF MORTGAGE BROKERS

**SECTION 40‑58‑10.** Citation of chapter; mortgage loan broker requirements.

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

(A) This chapter may be cited as the Licensing of Mortgage Brokers Act.

(B) A person may not broker a mortgage loan as defined in this chapter unless the broker of the mortgage loan:

(1) is an exempt person as defined by Section 40‑58‑20(16); or

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

**SECTION 40‑58‑20.** Definitions.

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

As used in this chapter:

(1) “Act as a mortgage broker” means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by: (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent, as that term is defined in 24 C.F.R. Part 202 et seq., whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. “Act as a mortgage broker” also includes bringing a borrower and lender together to obtain mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500. 2(b).

(2) “Act as a mortgage lender” means to engage in the business of making or servicing mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan.

(3) “Administrator” means the Administrator of the Department of Consumer Affairs (department) or the administrator’s designees.

(4) “Advertising” means a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction.

(5) “Affiliate” means a company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.). For purposes of this item, the term “control” means ownership of all of the voting stock or comparable voting interest of the controlled person.

(6) “Borrower” means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person’s ownership interest in the dwelling is or is to be subject to the security interest.

(7) “Branch manager” means the natural person who is in charge of and who is responsible for the business operations of a branch office of a licensee.

(8) “Branch office” means an office of the licensee that is separate and distinct from the licensee’s principal office.

(9) “Clerical or support duties” mean administrative functions after the receipt of an application by a licensed mortgage originator or broker, such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:

(a) The receipt, collection, and distribution common for the processing or underwriting of a residential mortgage loan; or

(b) Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(10) “Control”, except as provided in item (5), means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to have “control” of a company if that person: (i) is a director, general partner or executive officer, (ii) directly or indirectly has the right to vote ten percent or more of a class of a voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (iii) in the case of an LLC, is the managing member, or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent or more of the capital.

(11) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et. seq.), and includes a credit union.

(12) “Dwelling” means the same as the term in Section 226.2(a)19 of Title 12 of the Code of Federal Regulations and the Federal Reserve Board’s Official Staff Commentary to that section.

(13) “Employee” means a natural person who has an employment relationship, acknowledged by both the natural person and the mortgage broker, and is treated like an employee for purposes of compliance with the federal income tax laws.

(14) “Escrow account” means an account that a mortgage lender establishes or controls on behalf of a borrower to pay taxes, insurance premiums including flood insurance, or other charges with respect to a mortgage loan, including charges that the borrower and mortgage lender have voluntarily agreed that the mortgage lender collects and pays. The definition encompasses an account established for this purpose. For purposes of this item, the term “escrow account” excludes an account that is under the borrower’s total control.

(15) “Escrow funds” means money entrusted to a mortgage lender by a borrower for the purpose of payment of taxes and insurance or other payments to be made in connection with the servicing of a mortgage loan.

(16) “Exempt person” means:

(a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;

(c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;

(d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;

(e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person’s residence;

(f) a natural person who sells residential real estate and who lends or services, in one calendar year, no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for the purchase money obligation, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that this exemption is not in compliance with the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110‑289;

(g) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;

(h) an attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

(i) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD‑certified, Neighborworks‑certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts; or

(j) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties.

(17) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) “Financial services or financial services related business” means pertaining to securities, commodities, banking, insurance, consumer lending, or real estate including, but not limited to, acting as or being associated with a bank or savings association, credit union, mortgage lender, mortgage servicer, mortgage broker, real estate broker, real estate salesperson or agent, closing agent, title company, or escrow agent.

(19) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) “Individual servicing a mortgage loan” means an employee of a mortgage lender licensed in this State, that:

(a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan when:

(i) the borrower is in default; or

(ii) the borrower is in reasonably foreseeable likelihood of default;

(b) works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or

(c) otherwise finalizes collection through the foreclosure process.

(21) “Licensee” means a person who is licensed pursuant to this chapter.

(22) “Loan commitment” or “commitment” means a statement, written or electronic, by the mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.

(23) “Loan originator” means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage broker, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of “loan originator” does not include an exempt person described in item (16) of this section or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are “loan originators” as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110‑289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(24) “Make a mortgage loan” means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(25) “Managing principal” means a natural person who meets the requirements of Section 40‑58‑50(B) and who agrees to be primarily responsible for the operations of a licensed mortgage broker.

(26) “Mortgage broker” means a person who acts as a mortgage broker, as that term is defined in item (1) of this section.

(27) “Mortgage lender” means a person who acts as a mortgage lender as that term is defined in item (2) of this section or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(28) “Mortgage loan” means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower’s dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(29) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(30) “Nontraditional mortgage product” means a mortgage product other than a thirty‑year fixed rate mortgage loan.

(31) “Person” means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(32) “Processor or underwriter” means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal identifying information as defined in Section 16‑13‑510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 40‑58‑100.

(33) “Registered loan originator” means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(34) “Residential real property” means real property located in the State of South Carolina upon which there is located or is to be located one or more single‑family dwellings or dwelling units that are to be occupied as the owner’s dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(35) “RESPA” means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and regulations adopted pursuant to it by the Department of Housing and Urban Development.

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

(37) “Tablefunding” means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(38) “TILA” means the Truth in Lending Act, 15 U.S.C. Section 1601 et seq. and regulations adopted pursuant to it by the Board of Governors of the Federal Reserve System.

(39) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

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

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

(A) A person may not act as a mortgage broker in this State without first being licensed with the administrator. A person, required to be licensed pursuant to this chapter, may not do business without a license under any name or title, or circulate or use advertising, including electronic means, or make a representation or give information to any person, which indicates or reasonably implies activity within the scope of this chapter unless that person has a license.

(B) It is unlawful for a person to employ, to compensate, or to appoint as its agent a loan originator unless the loan originator is licensed pursuant to this chapter. The license of a loan originator is not effective during any period when that person is not employed by a mortgage broker licensed pursuant to this chapter. When a loan originator ceases to be employed by a licensed mortgage broker, the loan originator and the mortgage broker by whom that person was employed shall notify promptly the administrator in writing. The mortgage broker’s notice must include a statement of the specific reason or reasons for the termination of the loan originator’s employment. The reason for termination is confidential information and must not be released to the public. A loan originator must not be employed simultaneously by more than one mortgage broker. If a licensed loan originator changes employment, a new license must be issued and a fee of twenty‑five dollars must be paid for issuance of the new license.

(C) Notwithstanding subsection (A) of this section, the provisions of this chapter do not apply to an exempt person.

(D) Independent contractors, including processors and underwriters, must be separately licensed.

**SECTION 40‑58‑40.** Surety bonds; determination of amount; uses.

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

A mortgage broker shall post and maintain a surety bond in an amount determined by the administrator that is based on the total dollar amount of mortgage loans originated in a calendar year pursuant to the following: (1) dollar volume of mortgage loans from $0 to $49,999,999 surety bond of $25,000, (2) dollar volume of mortgage loans from $50,000,000 to $99,999,999 surety bond of $40,000, (3) dollar volume of mortgage loans greater than $100,000,000 surety bond of $55,000. In no case will the surety bond be less than the amount of twenty‑five thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the administrator, must be executed to the administrator, and must be for the use of the State for the recovery of expenses, fines, and/or fees levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the mortgage broker. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond has been filed with the administrator before the termination of the previous bond. In the event that the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to Section 40‑58‑50.

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

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

(A) An application to become licensed as a mortgage broker or loan originator must be in writing, under oath, and in a form prescribed by the administrator. The application must contain any information the administrator deems necessary including the name and complete business and residential address or addresses, and social security number or if applicable Employer Identification Number (EIN) 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, loan originators.

(B)(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the administrator and the descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant and any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant as required by this chapter, including consent to a national and state criminal history record checks and a set of the applicant’s fingerprints in a form acceptable to the administrator. 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 credit reports and national and state criminal history record checks by the Federal Bureau of Investigation (FBI) and the South Carolina Law Enforcement Division (SLED). Using the information supplied by the administrator to SLED, the applicant must undergo a state criminal record checks, supported by fingerprints, by SLED, and a national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(2) An applicant for a mortgage broker’s license must have at least three years’ experience in financial services or financial services related business or other experience or competency requirements the administrator may impose before an initial license is issued.

(a) Instead of a showing of three years’ experience, an applicant may show proof of three years’ employment with a federally insured depository institution, or a VA‑, FHA‑, or HUD‑approved mortgagee.

(b) Instead of one of the required year’s 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.

(3) If the applicant is a partnership, limited liability company (LLC), or corporation, at least one partner, member‑manager, or principal officer shall have the experience required for the applicant. Each applicant shall identify the person meeting the experience requirement to serve as the applicant’s managing principal. The managing principal shall operate the business under his full charge, control, and supervision. The managing principal also may serve as the branch manager of a licensee branch office. Each main and branch office of a mortgage broker licensed pursuant to this chapter must have a branch manager who meets the experience requirements of subsection (B)(2). The mortgage broker licensee must designate a managing principal in writing and notify the administrator of any changes in managing principal. The managing principal and each branch manager must meet the requirements in subsection (C) of this section.

(C) The application for a loan originator license must designate the employing mortgage broker and must include descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national and state criminal history record checks and a set of the applicant’s fingerprints in a form acceptable to the administrator. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining credit reports and national and state criminal history record checks by the FBI and SLED. Using the information supplied by the administrator to SLED, the applicant must undergo a state criminal record checks, supported by fingerprints, by SLED, and a national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines. Additionally, the applicant must:

(1) complete satisfactorily a prelicensing educational course of at least twenty hours and a written examination approved pursuant to 12 U.S.C. 5101 et seq.;

(2) have never had a loan originator license revoked in any governmental jurisdiction;

(3) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten‑year period preceding the date of application for licensing, or (ii) at any time if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering; and

(4) be at least eighteen years of age and otherwise comply with this chapter.

(D) Any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements of subsection (C) of this section, upon payment of the applicable fee, meets the qualifications for licensure as a loan originator subject to the provisions of Section 40‑58‑60 of this chapter.

**SECTION 40‑58‑55.** (Reserved.)

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

**SECTION 40‑58‑60.** Issuance of license; contents and posting; issuance as indication of approval of contracts by State or state agency; correction of errors; advertising.

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

(A) Upon the filing of an application for a license, if the administrator finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members if the applicant is a partnership, 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 and in accordance with all applicable state and federal laws, it shall license the applicant and issue a license. If the administrator 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 at which the business is to be conducted and must state fully the name of the licensee and the date of the license. A license must be posted prominently in each place of business of the licensee. The license is not transferable or assignable.

(D) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or a state agency.

(E) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in a material respect, the licensee promptly shall file a correcting amendment to the information contained in the document.

(F) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601 et seq. and the South Carolina Consumer Protection Code, Title 37.

**SECTION 40‑58‑65.** Maintaining, availability, and examination of records; mortgage loan logs; official place of business; notice of closing of branch office or ceasing doing business in State.

[Section effective January 1, 2010. See, also, section effective until 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 administrator to determine compliance with this chapter, and shall include a mortgage loan log that contains these specific data elements: (i) credit score of the borrower, (ii) adjustable or fixed type of loan, (iii) term of the loan, (iv) annual percentage rate of the loan, and (v) appraised value of the collateral. Each licensee shall submit its mortgage loan log data and the data identified in 12 C.F.R. Part 203 et seq., in a form determined by the administrator by March thirty‑first of each year. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the administrator pursuant to this section is confidential and may be released only in composite form. The administrator shall prepare and make available to the public a report based on the above data. The report must be available by June thirtieth of each year. The mortgage loan log must be completed with information known at the time of review by the administrator and must include loans in process, closed loans, turndowns, denials, and withdrawals. A mortgage broker with two or more licensed offices may consolidate the records at any one of the licensed offices so long as the administrator is notified of the location of the records. 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. A licensee’s records may be maintained electronically, if approved by the administrator, so long as they are readily accessible for examination by the administrator.

(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 administrator in writing.

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

(1) mortgage broker notifies the administrator in writing seven days before the opening of a branch office of the location of the branch office, the branch manager for each branch location, and that all records from the branch office are stored in a main or branch location in this State which is staffed by one or more licensees during regular business hours;

(2) records of any pending mortgage loan 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 within seven business days of a written request delivered by facsimile transmission, mail, or hand delivery by the administrator;

(3) broker notifies the administrator in writing within seven business days of closing a branch office;

(4) mortgage broker licensee is responsible and accountable for the activities of all licensed locations, branch managers, and loan originators. Compliance reviews must include examination of all facts and circumstances of branch operations to ensure this responsibility and accountability.

(D) The administrator may examine the books and records of a mortgage broker and other documents and records 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 administrator during an examination are confidential and the administrator must certify that it is in compliance with the Right to Financial Privacy Act (RFPA).

(E) The administrator may cooperate and share information with an agency of this State, other states, or the federal government. The administrator may accept or participate in examinations conducted by one of these agencies.

(F) If the mortgage broker fails to notify the administrator of the existence or closing of a branch 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 penalties as set forth in Section 40‑58‑80.

(G) A mortgage broker licensee who ceases doing business in this State must notify the administrator at least seven days in advance. The notification must include a withdrawal plan that includes a timetable for disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records.

(H) A mortgage broker licensee may develop, maintain, and test disaster recovery plans for all records that are maintained.

**SECTION 40‑58‑67.** Continuing professional education requirements.

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

(A)(1) Licensees must complete at least eight hours of continuing professional education annually. Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years. The continuing professional education completed must be reported to the administrator annually. Course providers must maintain records of attendees for two years after the course.

(2) Documentation of courses completed must be maintained by the mortgage broker for all licensees and shall consist of a certificate of completion issued by the provider of the course showing the recommended number of hours of continuing professional education. This documentation is subject to inspection by the administrator for up to two years after the date of the course.

(B) If a licensee fails to complete his continuing professional education prior to renewal, his license shall expire and the licensee shall pay a penalty of one hundred dollars in order to renew the license.

(C) All prelicensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry pursuant to 12 U.S.C. 5101 et seq. before credit may be awarded. Applicants and licensees that successfully complete education or testing approved through the Nationwide Mortgage Licensing System and Registry shall fulfill the requirements of this State.

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

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

In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person in the course of a mortgage loan transaction to:

(1) misrepresent the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan. 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 loan or a mortgagor;

(3) engage in a transaction, practice, or course of business which is unconscionable, as provided in Section 37‑5‑108, or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan;

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

(5) collect any allowable third party fees excluding appraisals or credit reports before a conditional mortgage loan commitment is obtained by the mortgage broker;

(6) influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. This item does not prohibit a mortgage broker or mortgage lender from asking the appraiser to do one or more of the following:

(a) consider additional appropriate property information;

(b) provide further detail, substantiation, or explanation for the appraiser’s value conclusion; or

(c) correct errors in the appraisal report;

(7) fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:

(a) requested from the third party in writing by the mortgage broker or an employee of the mortgage broker; and

(b) performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender;

(8) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans as advertised available to qualified applicants;

(9) fail to provide disclosures as required by state or federal law or collect any fee prior to providing required disclosures;

(10) fail to comply with this chapter or any other state or federal law including rules and regulations applicable to a business regulated by this chapter;

(11) falsely advertise or misuse names in violation of 18 U.S.C. Section 709 or state law; or

(12) use any trade name or insignia of membership in any organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, any business card, stationery, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.

**SECTION 40‑58‑75.** Mortgage broker fee agreements disclosing charges.

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

(A) Within three business days of the receipt of an application for a mortgage loan, the broker must provide a mortgage broker fee agreement that discloses the total estimated charges to the borrower for the mortgage loan and an itemization of the charges provided if required under, federal or state law. The disclosure is considered delivered when deposited with United States Postal Service for first class delivery.

(B) A person may not earn, charge, or collect a mortgage broker or processing 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 federal or state law.

(D) A mortgage broker fee agreement must be in writing and include the current name, address, and telephone number of the mortgage broker’s branch office, the account number, if any, the date of the agreement, the name of the borrower or proposed borrower, signature of the borrower and mortgage broker, the amount of any fees, and the nature of services provided to the borrower. A copy of the completed agreement must be provided to the borrower by the mortgage broker. The mortgage broker agreement may provide for a signed acknowledgement by the borrower of receipt of a copy of the agreement. If a mortgage broker co‑brokers mortgage loans, the mortgage broker agreement must contain a statement advising the applicant that the loan may be co‑brokered. Within three days of making a final decision to co‑broker a loan, the broker must provide the applicant with written notice of co‑brokering, including the name and street and mailing address of the co‑broker as well as which broker is to be contacted regarding progress of the mortgage broker’s services provided to the applicant. Each broker in a co‑brokering arrangement must be licensed with the administrator.

(E) Additional disclosure requirements exist and must be complied with pursuant to Chapter 10 and Chapter 23, Title 37.

**SECTION 40‑58‑78.** Mortgage broker fee agreement requirements; penalty for violations; unintentional violations.

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

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

(1) the mortgage broker or loan 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 loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of that person;

(3) a detailed description of the services the mortgage broker or loan originator agrees to perform for the borrower, and a good faith estimate of any fees the mortgage broker or loan 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 loan originator violates the provisions of subsection (A), the borrower may recover from the mortgage broker or loan 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 loan 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) A mortgage broker or loan originator charged with the violation must not be held liable in an action brought under this section for a violation if the mortgage broker or loan 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.** Denial, suspension, revocation, or non‑renewal of license; grounds; administrative penalty; cease and desist orders; investigation or examination of loans; notification of national registry.

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

(A) The administrator, by order, may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant pursuant to this chapter or may restrict or limit the activities relating to mortgage loans of a licensee or a person who owns an interest in or participates in the business of a licensee, if the administrator finds that both:

(1) the order is in the public interest; and

(2) any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee. The person:

(a) has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;

(b) has violated or failed to comply with any provision of this chapter or order of the administrator;

(c) has been convicted of, or pled guilty or nolo contendere to, a felony, or, within the past ten years, a misdemeanor involving financial services or financial services related business, or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering in a domestic, foreign, or military court;

(d) is enjoined permanently or temporarily by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving financial services or financial services related business;

(e) is the subject of an order of the administrator denying, suspending, or revoking that person’s license;

(f) is the subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person’s license;

(g) does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or bond or capital requirements, pursuant to this chapter;

(h) has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business that has been subject to an order or injunction described in subitem (d), (e), or (f) of this item;

(i) has failed to pay the proper filing or renewal fee pursuant to this chapter or any fine or fee imposed by any governmental entity. However, the administrator may enter only a denial order pursuant to this subitem, and the administrator shall vacate the order when the deficiency is corrected; or

(j) has falsely certified attendance or completion of hours at an approved education course.

(B) The administrator, by order, summarily may postpone or suspend the license of a licensee pending final determination of a proceeding pursuant to this section. Upon entering the order, the administrator shall notify promptly the applicant or licensee that the order has been entered, the reasons for the order, and the procedure for requesting a hearing before the Administrative Law Court. If a licensee does not request a hearing and the administrator does not request a hearing, the order remains in effect until it is modified or vacated by the administrator.

(C) The administrator, by order, may impose an administrative penalty upon a licensee or any partner, member, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for a violation of this chapter. The administrative penalty may not exceed ten thousand dollars for each violation. The administrator may impose an administrative penalty that may not exceed ten thousand dollars for each violation of this chapter by a person other than a licensee or exempt person.

(D) In addition to other powers pursuant to this chapter, upon finding that an action of a person is in violation of this chapter, the administrator may order the person to cease and desist from the prohibited action. If the person subject to the order fails to request a contested case hearing in accordance with Section 40‑58‑90, or if the person requests the hearing and it is denied or dismissed, and the person continues to engage in the prohibited action in violation of the administrator’s order, the person is subject to an administrative penalty that may not exceed twenty‑five thousand dollars for each violation of the administrator’s order. The penalty provision of this section is in addition to and not instead of another provision of law for failure to comply with an order of the administrator.

(E) Unless otherwise provided, all actions and hearings pursuant to this chapter are governed by Chapter 23, Title 1.

(F) When a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the administrator, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the administrator.

(G) If the administrator has reasonable grounds to believe that a licensee or other person has violated this chapter or that facts exist that would be the basis for an order against a licensee or other person, the administrator, either personally or by a person duly designated by the administrator, at any time may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. The reasonable cost of this investigation or examination must be charged against the licensee. The administrator may require the licensee or other person to submit a consent to a national and state fingerprint‑based criminal history record check and a set of that person’s fingerprints in a form acceptable to the administrator in connection with an examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints is grounds for disciplinary action.

(H) The administrator may subpoena documents and witnesses, and compel their production and attendance, to examine under oath all persons whose testimony the administrator considers relative to the person’s business, and require the production of books, papers, or other materials.

(I) The administrator may conduct routine examinations of the books and records of a licensee to determine compliance with this chapter.

(J) The administrator may cooperate and share information with an agency of this State, other states, or the federal government. The administrator may accept or participate in examinations conducted by one of these agencies.

(K) In addition to the authority described in this section, the administrator may require a person to pay to a borrower or other natural person amounts received by the person or its employees in violation of this chapter.

(L) If the administrator finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in any activity that results in the entry of an order suspending or withdrawing the license of a licensee, the administrator may prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for the period of time the administrator considers necessary.

(M) A person who wilfully 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, for each offense. Each violation is considered a separate offense.

(N) Orders issued by the administrator or by the Administrative Law Court pursuant to this chapter must be reported by the administrator to the Nationwide Mortgage Licensing System and Registry.

(O) 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.

**SECTION 40‑58‑90.** Request for contested case hearing before Administrative Law Court.

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

(A) A person aggrieved by an administrative order issued by the administrator may request a contested case hearing before the Administrative Law Court in accordance with the court’s rules of procedure. If the person fails to request a contested case hearing within the time provided in the court’s rules of procedure, the administrative order becomes final and the administrator may bring an action to enforce its order pursuant to Chapter 23, Title 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the Administrative Law Court is reviewable immediately if review of the final decision of the Administrative Law Court would not provide an adequate remedy.

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be served upon the administrator and all parties of record. The final decision of the administrative law judge may be appealed as provided in Chapter 23, Title 1.

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

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

The administrator 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 January 1, 2010. See, also, section effective until 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 location.

(2) The initial nonrefundable license fee is fifty dollars for a loan originator license, and fifty dollars, nonrefundable, for a renewal license. In addition, all licensees must pay the cost of obtaining credit reports and national and state criminal history record checks as the administrator may require. The broker shall notify the administrator in writing ten days before opening a new location or changing the address of a licensed location. A fee of twenty‑five dollars is required when the licensee notifies the administrator of a change in address for a licensed location.

(B)(1) The term of each license is one year. Licenses issued pursuant to this chapter expire on December thirty‑first annually or another date that the administrator may determine and must be renewed in accordance with the provisions of this section.

(2) The renewal period for all licensees is from November first through December thirty‑first annually or on any other dates that the administrator may determine.

(3) Applications received after December thirty‑first, or any other date the administrator may determine, are late and late fees apply.

(C) If a license of a licensed mortgage broker is not renewed before the dates in subsection (B), five hundred dollars in addition to the renewal fee pursuant to subsection (A) must be assessed as a late fee to any renewal. If a license of a licensed loan originator is not renewed before the dates in subsection (B), one hundred dollars in addition to the renewal fee pursuant to subsection (A) of this section must be assessed as a late fee to any renewal. If a licensee fails to renew his license within thirty days after the date the license expires or otherwise maintain a valid license, the administrator shall require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any fee that has accrued. All renewal applications must contain information required by the administrator. All funds collected by the department pursuant to this chapter must be used to implement the provisions of this chapter and are nonrefundable.

**SECTION 40‑58‑120.** Maintenance of records; composite annual report; confidentiality.

(A) A licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with this chapter. The recordkeeping system of a licensee is sufficient if he makes the required information reasonably available.

(B) On or before March thirty‑first each year a licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all mortgage loans made or brokered by him. The licensee shall pay a fine of one hundred dollars each day for late or incomplete annual reports.

(C) The report must include, but is not limited to, the volume and amounts of first and second lien mortgage loans originated by licensee and closed in the name of another party and the volume and amounts of first and second lien mortgage loans originated and closed in the name of the licensee.

(D) The annual report also must include the total gross revenue earned in this State under this license.

(E) Information contained in annual reports is confidential and may be published only in composite form.

**SECTION 40‑58‑130.** Participation in Nationwide Mortgage Licensing System Registry.

(A) The administrator may participate in the Nationwide Mortgage Licensing System and Registry and may take all actions necessary and appropriate to that end including, but not limited to, the following:

(1) facilitating and participating in the establishment and implementation of the Nationwide Mortgage Licensing System and Registry;

(2) entering into agreements and contracts including cooperative, coordinating, and information sharing agreements;

(3) contracting with third parties to process, maintain, and store information collected by the Nationwide Mortgage Licensing System and Registry;

(4) authorizing the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the administrator’s behalf in order to receive national and state criminal history background record checks from the FBI and SLED and furnishing the fingerprints to SLED to retain for certification purposes and for notification of the administrator regarding subsequent criminal charges which may be reported to SLED, or the FBI, or both in accordance with Section 40‑58‑50;

(5) authorizing the Nationwide Mortgage Licensing System and Registry to collect credit reports on the administrator’s behalf for all licensees;

(6) requiring persons that must be licensed by this chapter to utilize the Nationwide Mortgage Licensing System and Registry;

(7) requiring all applicants and licensees to pay all applicable funds provided for in this chapter through the Nationwide Mortgage Licensing System and Registry;

(8) providing information to and receiving information from the Nationwide Mortgage Licensing System and Registry;

(9) authorizing a third party to collect funds associated with licensure on behalf of the administrator; and

(10) authorizing the Nationwide Mortgage Licensing System and Registry to collect and disburse consumer complaints.

(B) Persons required to be licensed pursuant to this chapter shall pay all applicable fees to utilize the Nationwide Mortgage Licensing System and Registry and consent to utilizing the Nationwide Mortgage Licensing System and Registry to obtain fingerprint‑based criminal history background record checks and credit reports.

(C) The administrator shall provide licensees with written notice sent to the address of record on file with the administrator through the United States Postal Service the date the Nationwide Mortgage Licensing System and Registry will be available for their use. Licensees have one hundred and twenty days from the date the system is available for use to enter all their licensing information into the Nationwide Mortgage Licensing System and Registry. All filings required by the administrator pursuant to this chapter after the date the system is available for use must be made through the Nationwide Mortgage Licensing System and Registry.

(D) All licensees licensed through the Nationwide Mortgage Licensing System and Registry must use the unique identifier assigned in all advertising and on all mortgage loan documents.

(E) Notwithstanding another provision of law, the Nationwide Mortgage Licensing System and Registry is not intended to and does not replace or affect the administrator’s authority to grant, suspend, revoke, or deny a license required pursuant to this chapter.