FAIR MORTGAGE LENDING ACT
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Fair Mortgage Lending Act

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23-39-501. Title.

This subchapter may be referred to as the "Fair Mortgage Lending Act".

HISTORY: Acts 2003, No. 554, § 1.

23-39-502. Definitions.

As used in this subchapter:

(1) "Applicant" means a person who has applied to become licensed under this subchapter as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(2) "Branch manager" means the individual who is in charge of the business operations of one (1) or more branch offices of a mortgage broker, mortgage banker, or mortgage servicer;

(3) "Branch office" means a location that is separate and distinct from the licensee's principal place of business and includes a net branch or any location from which business is conducted under the license or in the name of the mortgage broker, mortgage banker, or mortgage servicer:

(A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;

(B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued; or

(C) Which due to the actions of any employee, associate, or loan officer of the licensee may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;

(4) "Commissioner" means the Securities Commissioner and includes the commissioner's designees;

(5) (A) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

(B) A person is presumed to control a company if the person:

(i) Is a director, general partner, or executive officer of the company;

(ii) Directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security of the company or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities of the company;

(iii) In the case of a limited liability company, is a managing member of the limited liability company; or

(iv) In the case of a partnership, has the right to receive upon dissolution or has contributed ten percent (10%) or more of the capital of the partnership;

(6) "Control affiliate" means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly controls or is controlled by the applicant;

(7) "Control person" means an individual who directly or indirectly exercises control over the applicant;

(8) "Employee" means an individual who is licensed with or employed by a mortgage broker, mortgage banker, or mortgage servicer, whether by employment contract, agency, or other arrangement and regardless of whether the individual is treated as an employee for purposes of compliance with the federal income tax laws;

(9) (A) "Exempt person" means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan officer under this subchapter.

(B) "Exempt person" includes any of the following:

(i) An employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(ii) An agency or corporate instrumentality of the federal government or any state, county, or municipal government granting mortgage loans under specific authority of the laws of any state or of the United States;

(iii) A trust company or industrial loan company chartered under the laws of Arkansas;

(iv) A small-business investment corporation licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as it existed on January 1, 2011;

(v) A real estate investment trust as defined in 26 U.S.C. § 856, as it existed on January 1, 2011;

(vi) A state or federally chartered bank, savings bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any of their operating subsidiaries;

(vii) An agricultural loan organization that is subject to licensing, supervision, or auditing by the Farm Service Agency, Commodity Credit Corporation, Rural Development Housing & Community Facilities Programs, Farm Credit Administration, or the United States Department of Agriculture;

(viii) A nonprofit corporation that:

(a) Qualifies as a nonprofit entity under § 501(c)(3) of the Internal Revenue Code;

(b) Is not primarily in the business of soliciting or brokering mortgage loans; and

(c) Makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged;

(ix) (a) A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission.

(b) Notwithstanding subdivision (9)(B)(ix)(a) of this section, "exempt person" does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan;

(x) A person who engages in seller-financed transactions or who as a seller of real property receives mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation if:

(a) The person does not receive from or hold on behalf of the borrower any funds for the payment of insurance or taxes on the real property; and

(b) The seller does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;

(xi) An individual or husband and wife who provide funds for investment in loans secured by a lien on real property on his or her or their own account and who do not:

(a) Charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services; and

(b) Collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;

(xii) An attorney at law rendering services in the performance of his or her duties as an attorney at law;

(xiii) A person performing any act under order of any court;

(xiv) A person acting as a mortgage broker, mortgage banker, or mortgage servicer for any person located in Arkansas, if the mortgage broker, mortgage banker, or mortgage servicer has no office or employee in Arkansas and the real property that is the subject of the mortgage is located outside of Arkansas;

(xv) An officer or employee of an exempt person described in subdivisions (9)(B)(ii)-(xiv) of this section if acting in the scope of employment for the exempt person; and

(xvi) A manufactured home retailer and its employees if performing only administrative or clerical tasks 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 banker or a mortgage broker for the performance of the administrative or clerical tasks;

(10) "Licensee" means a loan officer, mortgage broker, mortgage banker, or mortgage servicer who is licensed under this subchapter;

(11) (A) "Loan officer" means an individual other than an exempt person described in subdivision (9) of this section who in exchange for compensation as an employee of or

who otherwise receives compensation or remuneration from a mortgage broker or a mortgage banker:

(i) Solicits or offers to solicit an application for a mortgage loan;

(ii) Accepts or offers to accept an application for a mortgage loan;

(iii) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or

(iv) Issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement.

(B) "Loan officer" does not include:

(i) An individual who performs clerical or administrative tasks in the processing of a mortgage loan at the direction of and subject to the supervision and instruction of a licensed loan officer;

(ii) An underwriter if the individual performs no activities under subdivision (11)(A) of this section; or

(iii) An individual who is solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D), as it existed on January 1, 2011;

(12) "Make a mortgage loan" means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;

(13) "Managing principal" means a person who meets the requirements of § 23-39-505 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer;

(14) "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;

(15) "Mortgage broker" means a person who for compensation or other gain or in the expectation of compensation or other gain and, regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:

(A) Accepts or offers to accept an application for a mortgage loan;

(B) Solicits or offers to solicit an application for a mortgage loan;

(C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or

(D) Issues or offers to issue mortgage loan commitments or interest rate guarantee agreements to borrowers;

(16) "Mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, reverse mortgage, or other equivalent consensual security interest encumbering:

(A) A dwelling as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2011; or

(B) Residential real estate upon which is constructed or intended to be constructed a dwelling;

(17) "Mortgage servicer" means a person that receives from or on behalf of a borrower:

(A) Funds or credits in payment for a mortgage loan; or

(B) The taxes or insurance associated with a mortgage loan;

(18) [Repealed.]

(19) "Operating subsidiary" means a separate corporation, limited liability company, or similar entity in which a national or state bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, maintains more than fifty percent (50%) voting rights, a controlling interest, or otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting rights or a controlling interest in the subsidiary;

(20) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized;

(21) "Principal place of business" means a stationary construction consisting of at least one (1) enclosed room or building in which negotiations of mortgage loan transactions of others may be conducted in private or in which the primary business functions of the licensee are conducted;

(22) "Reverse mortgage" means a nonrecourse loan that pays a homeowner loan proceeds drawn from accumulated home equity; and

(23) "Unique identifier" means a number or other identifier assigned by protocols established by the automated licensing system approved by the commissioner.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 1; 2009, No. 731, §§ 1-5; 2011, No. 894, §§ 1-4.

23-39-503. License required - Licensee records.

(a) It is unlawful for any person located in Arkansas other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer without first obtaining a license from the Securities Commissioner under this subchapter.

(b) It is unlawful for any person other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.

(c) It is unlawful for any person other than an exempt person to employ, to compensate, or to appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer under this subchapter.

(d) (1) The license of a loan officer shall terminate when his or her employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.

(2) When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this subchapter or ceases to act as a loan officer, the mortgage broker or mortgage banker with which the person was affiliated or by which that person is employed shall notify the commissioner in writing within thirty (30) days from the date on which the loan officer ceased to be employed or ceased activities as a loan officer.

(3) (A) A licensee that does not comply with subdivision (d)(2) of this section shall pay a late fee of two hundred fifty dollars ($250) for failure to timely notify the commissioner.

(B) The late fee may be waived, in whole or in part, in the sole discretion of the commissioner and for good cause shown.

(4) A loan officer shall not be employed simultaneously by more than one (1) mortgage broker or mortgage banker licensed under this subchapter.

(e) Each mortgage broker and mortgage banker licensed under this subchapter shall maintain a list of all loan officers employed by the mortgage broker or mortgage banker and who engage or attempt to engage in business with any person in Arkansas.

(f) No person other than an exempt person shall hold himself or herself out as a mortgage banker, mortgage broker, mortgage servicer, or loan officer unless the person is licensed in accordance with this subchapter.

HISTORY: Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 2; 2009, No. 731, § 6.

23-39-504. Rulemaking authority.

The Securities Commissioner may adopt any rules that he or she deems necessary to:

(1) Carry out the provisions of this subchapter;

(2) Provide for the protection of the borrowing public; and

(3) Provide any requirements necessary for the State of Arkansas to participate in a multistate automated licensing system; and

(4) Instruct mortgage brokers, mortgage bankers, mortgage servicers, and loan officers in interpreting this subchapter.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 3.

23-39-505. Qualifications for licensure - Issuance.

(a) (1) A person desiring to obtain a license as a loan officer, mortgage banker, mortgage broker, or mortgage servicer shall make written application for licensure to the Securities Commissioner in the form prescribed by the commissioner.

(2) The commissioner may approve by order a limited license with limitations, qualifications, or conditions.

(3) The application may require that the information be submitted in an electronic format.

(4) In addition to any other information required under this subchapter or rules adopted by the commissioner, the application shall contain information the commissioner deems necessary and shall include the following:

(A) The applicant's name, address, and social security number;

(B) The applicant's form of business and place of organization, including without limitation:

(i) A certified copy of the applicant's organizational and governance documents; and

(ii) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

(C) (i) The applicant's proposed method of and locations for doing business, if applicable.

(ii) The applicant's proposed method of doing business shall include whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;

(D)(i) The qualifications, business history, and financial condition of the applicant and any partner, officer, director, any person occupying a similar status or performing similar functions, any managing principal, or any person directly or indirectly controlling the applicant.

(ii) The qualifications and business history of persons under subdivision (a)(4)(D)(i) of this section shall include:

(a) A description of an injunction or administrative order, including a denial to engage in a regulated activity by any state or federal authority that had jurisdiction over the applicant;

(b) A conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services; and

(c) A felony conviction; and

(E) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant.

(b) In addition to meeting the requirements imposed by the commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least eighteen (18) years of age;

(2) (A) Have received a high school diploma or a general educational development certificate.

(B) Subdivision (b)(2)(A) of this section does not apply to an individual who is licensed as a loan officer on July 1, 2007;

(3) Have satisfactorily completed any educational and testing requirements as the commissioner may by rule or order impose; and

(4) Furnish to the commissioner or through an automated licensing system, information concerning the applicant's identity and background, including:

(A) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check; and

(B) Personal history and experience in a form prescribed by the automated licensing system and the commissioner, including the submission of authorization for the automated licensing system and the commissioner to obtain:

(i) An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2011; and

(ii) Information related to any administrative, civil, or criminal proceeding by a governmental jurisdiction.

(c) In addition to the requirements under subsections (a) and (b) of this section, each applicant for licensure as a mortgage broker, mortgage banker, or mortgage servicer shall comply with the following requirements at the time of application and at all times thereafter:

(1) If the applicant is a sole proprietor, the applicant shall have at least three (3) years of experience in mortgage lending or other experience or competency requirements as the commissioner may adopt by rule or order;

(2) If the applicant is a general or limited partnership, at least one (1) of its general partners shall have the experience as described in subdivision (c)(1) of this section;

(3) If the applicant is a corporation, at least one (1) of its principal officers shall have the experience as described in subdivision (c)(1) of this section; and

(4) If the applicant is a limited liability company, at least one (1) of its managers shall have the experience as described under subdivision (c)(1) of this section.

(d) Each applicant shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Each applicant for initial licensure shall pay a filing fee of:

(1) Seven hundred fifty dollars ($750) for the principal place of business of a mortgage broker, mortgage banker, or mortgage servicer;

(2) One hundred dollars ($100) for each branch office of a mortgage broker, mortgage banker, or mortgage servicer; and

(3) Fifty dollars ($50.00) for each loan officer.

(f) (1) (A) Each mortgage broker, mortgage banker, and mortgage servicer shall post a surety bond in the amount prescribed by rule or order of the commissioner.

(B) The amount of the surety bond prescribed by the commissioner under subdivision (f)(1)(A) of this section shall be:

(i) Based upon loan activity during the previous year; and

(ii) Not less than one hundred thousand dollars ($100,000).

(2) The surety bond shall be in the form prescribed by the commissioner and shall run to the state for the benefit of any claimants against the licensee and loan officers employed by the licensee to secure the faithful performance of the obligations of the licensee and loan officers employed by the licensee under this subchapter.

(3) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(4) A party having a claim against the licensee may bring suit directly on the surety bond, or the commissioner may bring suit on behalf of any claimants, either in one (1) action or in successive actions.

(5) Consumer claims shall be given priority in recovering from the bond.

(6) [Repealed.]

(g) Each applicant filing for licensure as a mortgage banker or mortgage servicer shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars ($25,000) and are:

(1) Prepared by an independent certified public accountant;

(2) Prepared in accordance with generally accepted accounting principles as promulgated by the Financial Accounting Standards Board;

(3) Accompanied by an opinion acceptable to the commissioner; and

(4) Dated within fifteen (15) months preceding the date on which the application is filed.

(h) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall be deemed to have met the qualifications for licensure as a loan officer upon filing a written

application with the commissioner in the form prescribed by the commissioner and payment of the applicable fee.

(i) Each principal place of business and each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall obtain a separate license.

(j) Except as set forth in § 23-39-503(d), each license issued by the commissioner under this subchapter expires at the close of business on December 31 of the calendar year unless the license is:

(1) Previously surrendered by the licensee and the surrender is accepted by the commissioner;

(2) Abandoned by the licensee as provided in § 23-39-506; or

(3) Suspended or revoked by the commissioner.

(k) Licenses issued under this subchapter are not transferable.

(l) (1) Control of a licensee shall not be acquired through a stock or equity purchase, transfer of interest, or other device without the prior written consent of the commissioner.

(2) A person seeking to acquire control of a licensee, at least thirty (30) days before the proposed change of control, shall:

(A) Pay the commissioner a fee of one hundred dollars ($100);

(B) Submit to the commissioner:

(i) The information required under subdivision (a)(4)(D) of this section;

(ii) The proposed transaction documents; and

(iii) Any other information deemed relevant by the commissioner;

(C) Submit financial statements according to subsection (g) of this section, if a licensee holds a mortgage banker or mortgage servicer license; and

(D) Certify that the licensee shall continue to meet the qualifications under this section.

(3) The commissioner may refuse to give written consent if he or she finds that any of the grounds for denial, revocation, or suspension of a license under § 23-39-514 are applicable to the person seeking to acquire control of a license.

(4) (A) Failure to notify the commissioner at least thirty (30) days before the proposed change of control shall result in a late fee of one hundred dollars ($100).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(m) (1) An application filed with the commissioner may be withdrawn upon written request of the applicant delivered to the commissioner at any time before the granting of the license.

(2) However, if a notice of intent to deny the application has been sent to the applicant, the applicant shall not withdraw the application except upon the written direction of the commissioner.

(n) (1) Unless a proceeding has been commenced to suspend or revoke the license, a license may be surrendered by a licensee by filing a written request to surrender the license in a form acceptable to the commissioner.

(2) The surrender of the license becomes effective upon acceptance by the commissioner.

(3) Notwithstanding a surrender or termination of a license and acceptance of the surrender or termination by the commissioner, if a licensee or any person acting on behalf of the licensee has knowingly violated any provision of this subchapter or any rule or order promulgated or issued under this subchapter:

(A) A proceeding may be commenced at any time within one (1) year following the effective date of the surrender or termination of the license; and

(B) An order may be entered revoking the license as of a date before the acceptance of the surrender or termination of the license.

(o) To issue a loan officer license, the commissioner shall find that:

(1) The applicant has:

(A) Never had a loan officer license revoked in a governmental jurisdiction;

(B) Not been found guilty of or pleaded guilty or nolo contendere to any offense described in § 23-39-514(a)(2)(C);

(C) Demonstrated sufficient financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the loan officer will operate honestly, fairly, and efficiently within the purposes of this subchapter; and

(D) Complied with the prelicensing education and testing requirements of subdivision (b)(3) of this section; and

(2) The applicant's employer has met the surety bond requirement of subdivision (f)(1) of this section.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 4; 2009, No. 164, § 10; 2009, No. 731, §§ 7-17; 2011, No. 894, §§ 5-8.

23-39-506. License renewal - Termination.

(a) A licensed mortgage broker, mortgage banker, and mortgage servicer wishing to renew a license shall:

(1) File a renewal application with the Securities Commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

(2) Present proof to the commissioner that the surety bond required in § 23-39-505(f)(1) is still in effect; and

(3) Pay the commissioner an annual renewal fee of three hundred fifty dollars ($350) for the licensee's principal place of business and one hundred dollars ($100) for each of the licensee's branch offices.

(b) The failure of a mortgage broker, mortgage banker, or mortgage servicer to timely file a renewal application shall subject the licensee to a late fee of one hundred dollars ($100).

(c) Each licensed loan officer wishing to renew a license shall:

(1) File an application with the commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

(2) Certify that the applicant has complied with the continuing education requirements as required by rules promulgated by the commissioner; and

(3) Pay an annual renewal fee of fifty dollars ($50.00).

(d) The failure of a loan officer to timely file a renewal application shall subject the loan officer to a late fee of fifty dollars ($50.00).

(e) (1) (A) A late fee assessed under subsection (b) or subsection (d) of this section shall be in addition to the renewal application fee under subsection (a) or subsection (c) of this section.

(B) All or part of the late fee may be waived by the commissioner for good cause.

(2) (A) The commissioner may consider an application and a license to be abandoned and surrendered and may require the licensee to comply with the requirements for the initial issuance of a license under this subchapter in order to continue in business if the licensee:

(i) Fails to file a renewal application within fifteen (15) days after the date the renewal application is due;

(ii) Unreasonably fails to remedy any deficiency in an application within thirty (30) days following the sending of written notice to the licensee; or

(iii) Unreasonably fails to deliver additional information or documents to the commissioner within thirty (30) days following the sending of written notice to the licensee.

(B) For purposes of this subdivision (e)(2), notice shall be complete upon:

(i) Deposit in the United States mail, postage prepaid, to the address of the licensee listed in the application; or

(ii) Delivery through an automated licensing system approved by the commissioner.

(3) The commissioner shall not reissue a license for which a late fee has accrued as a result of a person's failure to timely file a renewal application unless the late fee has been paid or waived by the commissioner for good cause.

(f) (1) A mortgage banker or a mortgage servicer shall submit audited financial statements to the commissioner within ninety (90) days after the end of the mortgage banker's or mortgage servicer's fiscal year.

(2) The audited financial statements submitted to the commissioner under subdivision (f)(1) of this section shall:

(A) Reflect that the mortgage banker or mortgage servicer has a net worth of at least twenty-five thousand dollars ($25,000); and

(B) Comply with the requirements of § 23-39-505(g)(1)-(3).

(3) (A) Failure to timely submit audited financial statements to the commissioner shall result in a late fee of two hundred fifty dollars ($250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 5; 2009, No. 731, § 18; 2011, No. 894, §§ 9-10.

23-39-507. Continuing education.

(a) In addition to the other licensing requirements under this subchapter, the Securities Commissioner may adopt rules to require continuing education of licensees under this subchapter for the purpose of enhancing the professional competence and professional responsibility of mortgage bankers, mortgage brokers, mortgage servicers, and loan officers and may condition the renewal of a license upon compliance with the commissioner's rules.

(b) The rules under subsection (a) of this section may include criteria for:

(1) The content of continuing education courses;

(2) Accreditation of continuing education sponsors and programs;

(3) Accreditation of videotape or other audiovisual programs;

(4) Computation of credit;

(5) Special cases and exemptions;

(6) General compliance procedures; and

(7) Sanctions for noncompliance with the continuing education requirements.

(c) Annual continuing professional education requirements shall be determined by the commissioner but shall not exceed eight (8) credit hours within a one-year period.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1.

23-39-508. Managing principals and branch managers.

(a) (1) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall have a managing principal who operates the business under that person's full charge, control, and supervision.

(2) The managing principal shall:

(A) Have at least three (3) years of experience in mortgage lending; or

(B) Meet the experience and competency requirements prescribed by rule or order of the Securities Commissioner.

(b) Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this subchapter.

(c) The managing principal for a licensee may also serve as the branch manager of one (1) or more of the licensee's branch offices.

(d) (1) Each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall have a designated branch manager who is in charge of and who is responsible for the business operations of a branch office.

(2) Each branch manager of a mortgage broker or mortgage banker must be licensed as a loan officer.

(e) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall file a form as prescribed by the Securities Commissioner indicating the licensee's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility as managing principal or branch manager.

(f) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall notify the commissioner within thirty (30) days of any change in its managing principal or branch manager designated for each branch.

(g) (1) A mortgage broker, mortgage banker, or mortgage servicer that does not comply with this section shall pay a late fee of two hundred fifty dollars ($250).

(2) All or part of the late fee may be waived by the commissioner for good cause.

(3) The commissioner may revoke or suspend the license of any mortgage broker, mortgage banker, or mortgage servicer who fails to pay any late fee assessed under subdivision (g)(1) of this section.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 6; 2009, No. 731, § 19.

23-39-509. Offices - Address changes - Location of records.

(a) A mortgage broker, mortgage banker, and mortgage servicer shall maintain a principal place of business.

(b) A mortgage broker, mortgage banker, and mortgage servicer shall identify the location in which the licensee's books, records, and files pertaining to mortgage loan transactions are maintained.

(c) The Securities Commissioner by rule may impose terms and conditions under which the records and files shall be maintained, including if the records must be maintained in this state.

(d) A principal place of business or branch office from which a mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan activity or business shall be a physical address. Mortgage loan activity or business includes without limitation the address appearing on business cards, stationery, promotional materials, or advertising.

(e) (1) A mortgage banker, mortgage broker, or mortgage servicer shall report a change of address of the principal place of business, a branch office, or a location in which the files pertaining to mortgage loan transactions are maintained within thirty (30) days after the change.

(2) (A) A licensee that does not comply with subdivision (e)(1) of this section shall pay a late fee of two hundred fifty dollars ($250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(3) The commissioner may revoke or suspend the license of a mortgage broker, mortgage banker, or mortgage servicer who fails to pay a late fee assessed under subdivision (e)(2) of this section.

(f) A mortgage broker, mortgage banker, or mortgage servicer that ceases to do business in this state shall:

(1) Notify the commissioner within thirty (30) days after the mortgage broker, mortgage banker, or mortgage servicer ceases to do business in this state that the mortgage broker, mortgage banker, or mortgage servicer has ceased to do business in this state; and

(2) Provide the commissioner the address where all records pertaining to loans made or serviced in this state will be maintained for the period of time required by this subchapter or rule of the commissioner.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 7; 2009, No. 731, § 20; 2011, No. 894, § 11.

23-39-510. Licensee duties.

(a) In addition to duties imposed by other statutory or common law, a person required to be licensed under this subchapter shall:

(1) Safeguard and account for any money received for, from, or on behalf of the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence;

(4) Make reasonable efforts with lenders with whom a mortgage broker regularly does business to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders;

(5) Include the full name, address, and telephone number of the licensee in all solicitations and advertisements; and

(6) (A) Provide the Securities Commissioner with a quarterly report of mortgage activity.

(B) The commissioner may designate by rule or order the information to be provided in the quarterly report.

(b) The unique identifier of a person soliciting or originating a mortgage loan shall be clearly shown on all mortgage loan application forms, solicitations, advertisements, business cards, websites, and any other document or medium established by rule or order of the commissioner.

HISTORY: Acts 2003, No. 554, § 1; 2009, No. 731, § 21; 2011, No. 894, § 12.

23-39-511. Records - Escrow funds or trust accounts.

(a) The Securities Commissioner shall keep a list of all applicants for licensure under this subchapter that includes:

(1) The applicant's name;

(2) The date of application;

(3) The applicant's place of residence; and

(4) Whether the license was granted or refused.

(b) (1) The commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers.

(2) The roster under subdivision (b)(1) of this section shall:

(A) Be kept on file in the office of the commissioner;

(B) Contain information regarding all orders or other actions taken against the licensees, loan officers, and other persons; and

(C) Be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the commissioner.

(d) (1) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall file a correcting amendment to the information contained in the document within thirty (30) days from the date on which the change takes place.

(2) (A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a late fee of two hundred fifty dollars ($250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(e) (1) A licensee shall maintain in a segregated escrow fund or trust account any funds that come into the licensee's possession but that are not the licensee's property and which the licensee is not entitled to retain under the circumstances.

(2) The escrow fund or trust account under subdivision (e)(1) of this section shall be held on deposit in a federally insured financial institution.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 2; 2009, No. 731, § 22.

23-39-512. Public inspection of records - Exceptions.

(a) (1) Unless otherwise specified in this section, all information filed with the Securities Commissioner shall be available for public inspection.

(2) The information contained in or filed with any application or report may be made available to the public under any rules the commissioner prescribes that are consistent with state or federal law governing the disclosure of public information.

(b) Except for reasonably segregable portions of information and records that by law would be made routinely available to a party in litigation with the commissioner, the commissioner shall not publish or make available the following information:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;

(2) Interagency or intra-agency memoranda or letters, including:

(A) Generally, records that reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her staff; and

(B) Specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner;

(3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including:

(A) Information concerning all employees of the State Securities Department and information concerning persons subject to regulation by the department; and

(B) Personal information about employees of mortgage brokers, mortgage bankers, mortgage servicers, or loan officers reported to the commissioner under the department's rules concerning registration of those persons;

(4) (A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication; or

(iii) Disclose the identity of a confidential source.

(B) The commissioner may also withhold investigatory records that would:

(i) Constitute an unwarranted invasion of personal privacy;

(ii) Disclose investigative techniques and procedures; or

(iii) Endanger the life or physical safety of law enforcement personnel.

(C) Investigatory records under this section include:

(i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violations by any person of any provision of any of the statutes, rules, or regulations administered by the commissioner; and

(ii) All written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible

violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

(5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions or mortgage lenders;

(6) (A) Financial records of mortgage bankers, mortgage brokers, mortgage servicers, or loan officers obtained during or as a result of an examination by the department.

(B) However, when a record under this subchapter is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked "confidential" by the mortgage banker, mortgage broker, mortgage servicer, or loan officer upon its submission.

(C) Information under subdivision (6)(B) of this section bound separately and marked "confidential" shall be considered nonpublic until ten (10) days after the commissioner has given the mortgage banker, mortgage broker, mortgage servicer, or loan officer notice that an order will be entered declaring the material public.

(D) If the mortgage banker, mortgage broker, mortgage servicer, or loan officer believes the commissioner's order is incorrect, the mortgage banker, mortgage broker, mortgage servicer, or loan officer may seek an injunction from the Pulaski County Circuit Court ordering the department to hold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner is appealed under applicable law;

(7) Trade secrets obtained from any person; or

(8) Any other records that are required to be closed to the public and are not considered open to public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq., or under other law.

(c) This section does not prevent the commissioner from sharing with other state or federal law enforcement authorities, regulatory authorities, or self-regulatory organizations authorized by law any information that the commissioner may have or may obtain in aid of the enforcement of this subchapter or any other state or federal law.

(d) (1) Except as otherwise provided in this subchapter, the requirements of any federal or state law regarding privacy or confidentiality of any information or material provided to an automated licensing system under this subchapter and any privilege arising under federal or state law, including the rules of any federal or state court with respect to the

information or material, shall continue to apply to the information or material after the information or material has been disclosed to the automated licensing system.

(2) The information or material provided to an automated licensing system under this subchapter may be shared with a state or federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

HISTORY: Acts 2003, No. 554, § 1; 2009, No. 731, §§ 23, 24.

23-39-513. Prohibited activities.

In addition to the other activities that are prohibited under this subchapter, it is unlawful for any person other than a person described in § 23-39-502(9)(B)(vi) in the course of any mortgage loan transaction or activity:

(1) To misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise;

(2) To improperly refuse to issue a satisfaction or release of a mortgage;

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, that the mortgage banker, mortgage broker, mortgage servicer, or loan officer is not entitled to retain;

(4) To pay, receive, or collect, in whole or in part, any commission, fee, or other compensation for brokering a mortgage loan in violation of this subchapter, including a mortgage loan brokered or solicited by any unlicensed person other than an exempt person;

(5) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information without disclosing the lengths of the loans, whether the interest rates are fixed or adjustable, and any other material limitations on the loans;

(6) To fail to disburse funds in accordance with a written commitment or agreement to make or service a mortgage loan;

(7) In connection with the advertisement, solicitation, brokering, making, servicing, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that:

(A) Is not in good faith or fair dealing;

(B) Is misleading or deceptive; or

(C) Constitutes a fraud upon any person; or

(8) (A) To broker or make a residential mortgage loan that contains a penalty for prepayment if the prepayment is made after the expiration of the thirty-six-month period immediately following the date on which the loan was made.

(B) A penalty for prepayment under subdivision (8)(A) of this section made within the thirty-six-month period shall not exceed any of the following amounts:

(i) Three percent (3%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;

(ii) Two percent (2%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or

(iii) One percent (1%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the third twelve-month period immediately following the date the loan was made;

(9) (A) To 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.

(B) This subdivision (9) does not prohibit a mortgage broker or mortgage banker from asking the appraiser to do one (1) or more of the following:

(i) Consider additional appropriate property information;

(ii) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) Correct errors in the appraisal report;

(10) To broker or make a refinancing of a residential mortgage loan when the refinancing charges additional points and fees, within a twelve-month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower, considering all of the circumstances surrounding the refinancing;

(11) To broker, make, or service a mortgage loan in violation of any federal law or any law of this state;

(12) To engage in practices that are dishonest or unethical in the mortgage industry;

(13) To unreasonably fail to deliver or provide information or documents promptly to the commissioner upon written request or to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information; or

(14) To unreasonably fail to supervise the branches, loan officers, and employees of the mortgage broker, mortgage banker, or mortgage servicer.

HISTORY: Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 2; 2005, No. 1679, § 3; 2007, No. 748, § 8; 2009, No. 164, § 11; 2009, No. 731, § 25; 2011, No. 720, § 1; 2011, No. 894, §§ 13-15.

23-39-514. Disciplinary authority.

(a) The Securities Commissioner by order may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this subchapter or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee if the commissioner finds that:

(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 officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:

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

(B) Has violated or failed to comply with any provision of this subchapter, any rule adopted by the commissioner, or any order of the commissioner issued under this subchapter or under Acts 1977, No. 806;

(C) Has pleaded guilty or nolo contendere to or has been found guilty in a domestic, foreign, or military court of:

(i) A felony;

(ii) An offense involving breach of trust, moral turpitude, money laundering, or fraudulent or dishonest dealing within the past ten (10) years; or

(iii) An offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the

insurance industry, or any other activity pertaining to financial services;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;

(E) Is the subject of an order of the commissioner:

(i) Denying, suspending, revoking, restricting, or limiting that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or

(ii) Directing that person to cease and desist from an activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806;

(F) Is the subject of an order, including a denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including without limitation the mortgage industry;

(G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest or made or brokered any mortgage loan with terms or conditions or in a manner contrary to Arkansas Constitution, Amendment 60;

(H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;

(I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer who has been subject to an order or injunction described in subdivisions (a)(2)(D)-(G) of this section; or

(J) (i) Has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter.

(ii) The commissioner may enter a denial order against a person under this subsection when the person has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter, but the commissioner shall vacate the order when all fees have been paid.

(b) (1) The commissioner by order may impose a civil penalty upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of this subchapter, a rule under this subchapter, or an order of the commissioner.

(2) The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation under subdivision (b)(1) of this section by a mortgage broker, mortgage banker, mortgage servicer, or loan officer.

(c) (1) The commissioner by order may summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section.

(2) Upon entering the order, the commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for issuing the order.

(3) The applicant or licensee may contest the order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the address of the licensee on file with the commissioner by first class mail, postage prepaid.

(4) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing, unless the hearing is postponed for a reasonable amount of time at the request of the licensee.

(5) If a licensee does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(6) If a hearing is requested or ordered by the commissioner, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or extend it until final determination.

(d) The commissioner by order may cancel a license or application if the commissioner finds that a licensee or applicant for a license:

(1) Is no longer in existence;

(2) Has ceased to do business as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or

(4) Cannot be located after a reasonable search.

(e) (1) In addition to other powers under this subchapter, upon finding that any action of a person is in violation of this subchapter, the commissioner may summarily order the person to cease and desist from the prohibited action.

(2) (A) Upon entering the order under subdivision (e)(1) of this section, the commissioner shall promptly notify the person that the order has been entered and state the reasons for the order.

(B) The person may contest the cease and desist order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the last known address of the person by first class mail, postage prepaid.

(C) The commissioner shall schedule a hearing to be held within a reasonable amount of time after the commissioner receives a timely written request for a hearing.

(D) If the person does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(E) If a hearing is requested or ordered, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or make it permanent.

(3) (A) A person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the commissioner's cease and desist order committed after entry of the order if:

(i) The person subject to the cease and desist order fails to appeal the order in accordance with § 23-39-515 or if the person appeals and the appeal is denied or dismissed; and

(ii) The person continues to engage in the prohibited action in violation of the commissioner's order.

(B) The commissioner may file an action requesting the civil penalty under subdivision (e)(3)(A) of this section with the Pulaski County Circuit Court or any other court of competent jurisdiction.

(C) The penalties of this section apply in addition to, but not in lieu of, any other provision of law applicable to a person for the person's failure to comply with an order of the commissioner.

(f) Unless otherwise provided, any action, hearing, or other proceeding under this subchapter shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) If the commissioner has grounds to believe that any person has violated the provisions of this subchapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner or the commissioner's designee, at any time, may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation.

(h) (1) The commissioner or the commissioner's designee may:

(A) Administer oaths and affirmations;

(B) Issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the commissioner deems relevant to the person's business; and

(C) Issue subpoenas to require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

(2) (A) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may issue an order requiring the person to appear before the commissioner or the officer designated by the commissioner, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question.

(B) Failure to obey the order of the court may be punished by the court as a contempt of court.

(3) (A) The assertion that the testimony or evidence before the commissioner may tend to incriminate or subject a person to a penalty or forfeiture shall not excuse the person from:

(i) Attending and testifying;

(ii) Producing any document or record; or

(iii) Obeying the subpoena of the commissioner or any officer designated by the commissioner.

(B) However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

(i) (1) From time to time and with or without cause, the commissioner may conduct examinations of the books and records of any applicant or licensee in order to determine the compliance with this subchapter and any rules adopted under this subchapter.

(2) The applicant or licensee shall pay a fee for each examination under subdivision (i)(1) of this section, not to exceed one hundred fifty dollars ($150) per examiner for each day or part of a day during which any examiners are absent from the office of the commissioner for the purpose of conducting the examination.

(3) In addition, the applicant or licensee may be required to pay the actual hotel and traveling expenses of the examiner traveling to and from the office of the commissioner while the examiner is conducting an examination under subdivision (i)(1) of this section.

(j) If the commissioner finds that the managing principal, branch manager, or loan officer 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 under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager, or loan officer from serving as a managing principal, branch manager, or loan officer for any period of time the commissioner deems appropriate.

(k) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (e)(1) of this section, before entering an order under this section, the commissioner shall provide:

(1) Prior notice to the licensee or person who is the subject of the order; and

(2) An opportunity for hearing.

(l) This section does not prohibit or restrict the informal disposition of a proceeding or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

(m) (1) If it appears upon sufficient grounds or evidence satisfactory to the commissioner that any person or licensee has engaged in or is about to engage in any act or practice that violates this subchapter or any rule or regulation adopted or order issued under this subchapter or that the assets or capital of any licensee are impaired or the licensee's affairs are in an unsafe condition, the commissioner may:

(A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order issued under this subchapter to the appropriate prosecuting attorney or regulatory agency, that with or without the reference may institute the appropriate criminal or regulatory proceedings under this subchapter; and

(B) (i) Summarily order the licensee or person to cease and desist from the act or practice under subdivisions (c)(1) and (e)(1) of this section and apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order issued under this subchapter, or both.

(ii) However, without issuing a cease and desist order, the commissioner may apply directly to the Pulaski County Circuit Court for injunctive or other relief.

(2) Upon proper showing, the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

(3) The commissioner may also seek and upon proper showing the appropriate court shall grant any other ancillary relief that may be in the public interest, including:

(A) The appointment of a receiver, temporary receiver, or conservator;

(B) A declaratory judgment;

(C) An accounting;

(D) Disgorgement;

(E) Assessment of a fine in an amount of not more than ten thousand dollars ($10,000) for each violation; and

(F) Any other relief as may be appropriate in the public interest.

(4) The court may not require the commissioner to post a bond.

HISTORY: Acts 2003, No. 554, § 1; 2005, No. 1679, § 4; 2007, No. 748, §§ 9, 10; 2009, No. 731, §§ 26, 27; 2011, No. 894, § 16.

23-39-515. Review of order of the commissioner.

(a) (1) Any person aggrieved by a final order of the Securities Commissioner may obtain a review of the order by filing in the Pulaski County Circuit Court within sixty (60) days after the entry of the order a written petition praying that the order be modified or set aside in whole or in part.

(2) (A) A copy of the petition shall be served upon the commissioner, after which the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered.

(B) When a petition under subdivision (a)(1) of this section has been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside any order of the

commissioner in whole or in part, except that a court may not set aside a summary order entered by the commissioner when the subject of the order has not requested a hearing before the commissioner as provided in § 23-39-514(c)(1) or (d)(1).

(b) (1) The findings of the commissioner as to the facts are conclusive if supported by competent, material, and substantial evidence.

(2) If either party applies to the court for leave to submit additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to submit the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be submitted upon the hearing before the commissioner in any manner and upon any condition as the court considers to be proper.

(3) After consideration of the additional evidence, the commissioner may modify his or her findings and order and shall file in the court the additional evidence together with any modified or new findings or order.

(c) Unless specifically ordered by the court, the commencement of proceedings under subsection (a) of this section does not operate as a stay of the commissioner's order.

HISTORY: Acts 2003, No. 554, § 1.

23-39-516. Criminal penalty.

(a) It is unlawful for any person to make or cause to be made in any document filed with the Securities Commissioner or in any proceeding under this subchapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

(b) (1) A person is guilty of a Class B felony if he or she:

(A) Willfully violates any provision of this subchapter, except subsection (a) of this section;

(B) Willfully violates subsection (a) of this section knowing the statement to be false or misleading in any material respect; or

(C) Willfully violates any rule under this subchapter or any order of the commissioner.

(2) Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense.

(c) No person may be imprisoned for violation of any order of the commissioner unless the person had actual knowledge of the order.

(d) The commissioner may refer any available evidence concerning violations of this subchapter or any rule or order issued under this subchapter to the appropriate prosecuting authority who, with or without the reference, may institute the appropriate criminal proceedings under this subchapter.

(e) This subchapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any statute or common law.

HISTORY: Acts 2003, No. 554, § 1.

23-39-517. [Repealed.]

23-39-518. Cooperation with other regulatory agencies.

(a) The Securities Commissioner may:

(1) Enter into an arrangement, agreement, or other working relationship with federal, state, or self-regulatory authorities, the Conference of State Bank Supervisors, or a subsidiary of the Conference of State Bank Supervisors to file and maintain documents in a multistate automated licensing system or other central depository system;

(2) Waive or modify in whole or in part by rule or by order any requirement of this subchapter if necessary to implement this section; and

(3) Establish new requirements under this subchapter to carry out the purpose of this section.

(b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with other states and federal authorities.

(c) (1) The commissioner may permit or require initial and renewal registration filings required under this subchapter to be filed with the Conference of State Bank Supervisors, a subsidiary entity owned by the Conference of State Bank Supervisors, the Financial Industry Regulatory Authority, or another entity maintaining or operating a multistate automated licensing system.

(2) The applicant or the licensee shall pay any fee charged for the applicant or the licensee to participate in the automated licensing system.

(d) The commissioner may accept uniform procedures and forms designed to:

(1) Implement a multistate automated licensing system;

(2) Implement a uniform national mortgage lending regulatory system; or

(3) Facilitate common practices and procedures among the states.

(e) (1) If the State of Arkansas joins a multistate automated licensing system for mortgage industry participants pursuant to this section, the commissioner may require a criminal background investigation of each applicant seeking to become licensed under this subchapter as a mortgage broker, mortgage banker, mortgage servicer, or loan officer.

(2) The criminal background investigation may include a fingerprint examination and may be conducted by the Federal Bureau of Investigation, the Department of Arkansas State Police, or an equivalent state or federal law enforcement department or agency.

(3) The information obtained by the background investigation may be used by the commissioner to determine the applicant's eligibility for licensing under this subchapter.

(4) The fee required to perform the criminal background investigation shall be borne by the license applicant.

(5) Notwithstanding any other law to the contrary, information obtained or held by the commissioner under this subsection:

(A) May be disclosed when necessary in any proceeding under this subchapter;

(B) May be provided to other state agencies participating in the multistate automatic licensing system;

(C) Shall be considered privileged and confidential; and

(D) Shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.

(6) No record, file, or document shall be removed from the custody of the Identification Bureau of the Department of Arkansas State Police.

(7) Any information made available to the affected applicant for licensure or to the person whose license is subject to sanctions shall be information pertaining to that person only.

(8) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(9) The commissioner may adopt rules and regulations to fully implement the provisions of this section.

HISTORY: Acts 2007, No. 748, § 11; 2009, No. 731, § 28.