

BANKS AND BANKING (7 PA.C.S.) - OMNIBUS AMENDMENTS**Act of Dec. 22, 2017, P.L. 1260, No. 81****Cl. 07**

Session of 2017

No. 2017-81

SB 751

AN ACT

Amending Title 7 (Banks and Banking) of the Pennsylvania Consolidated Statutes, in mortgage loan industry licensing and consumer protection, further providing for definitions, for license requirements, for exceptions to license requirements, for general requirements, for powers conferred on certain licensees engaged in the mortgage loan business, for mortgage loan business prohibitions, for application for license, for license fees and for licensee requirements and providing for the promulgation of regulations to effectively incorporate Federal regulations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "administrative or clerical tasks," "billing cycle," "clerical or support duties," "mortgage loan business," "mortgage loan correspondent," "qualifying individual" and "service mortgage loan" in section 6102 of Title 7 of the Pennsylvania Consolidated Statutes are amended and the section is amended by adding definitions to read:

§ 6102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative or clerical tasks." The receipt, collection and distribution of information common for the processing, **servicing** or underwriting of a mortgage loan and communication with a consumer to obtain information necessary for the processing, **servicing** or underwriting of a mortgage loan.

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"Billing cycle." In respect to open-end mortgage loans, the time interval between periodic billing dates **as established by the mortgage note and subsequent modification to the obligation**. A billing cycle shall be considered to be a monthly cycle if the closing date of the cycle is the same date each month or does not vary by more than four days from that date.

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"Clerical or support duties." Any of the following:

(1) The receipt, collection, distribution and analysis of information common for the processing, **servicing** or underwriting of a mortgage loan.

(2) Communicating with a consumer to obtain the information necessary for the processing, **servicing** or underwriting of a mortgage loan, to the extent that the communication does not include:

(i) offering or negotiating mortgage loan rates or terms; [or]

(ii) counseling consumers about mortgage loan rates or terms[.]; or

(iii) **offering or negotiating mortgage servicing terms.**

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"Delinquent." The date when an amount sufficient to cover a periodic payment of principal, interest and, if applicable, escrow becomes due and unpaid, and lasts until the time no periodic payment is due and unpaid, notwithstanding if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

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"Loss mitigation option." An alternative to foreclosure offered by the owner, holder or assignee of a delinquent mortgage loan that is made available through the servicer to the borrower.

* * *

"Mortgage loan business." [The business of advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans.] **The business of:**

- (1) **advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans; or**
- (2) **servicing mortgage loans.**

"Mortgage loan correspondent." A person who engages in the mortgage loan business by directly or indirectly originating and closing mortgage loans in his or her own name utilizing funds provided by a wholesale table funder or other funding sources under the circumstances described under section [6123(6)] **6123(a)(6)** (relating to mortgage loan business prohibitions) and simultaneously assigning the mortgage loans to the wholesale table funder.

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"Mortgage servicer." A person who engages in the mortgage loan business by directly or indirectly servicing a mortgage loan.

* * *

"Qualifying individual." An individual identified by a mortgage broker, mortgage lender, **mortgage servicer** or mortgage loan correspondent in the Nationwide Mortgage Licensing System and Registry who:

- (1) Is a mortgage originator or meets the licensing requirements of a mortgage originator.
- (2) Is a management-level officer assigned to the principal place of business of a mortgage broker, mortgage lender, **mortgage servicer** or mortgage loan correspondent.

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"Service mortgage loan." A collecting or remitting payment [for another,] or the right to collect or remit payments [for another,] of principal, interest, tax, insurance or other payment under a mortgage loan.

"Single point of contact." An individual or team of personnel, each of whom has the ability and authority to discuss mortgage loan mitigation options with a borrower on behalf of a mortgage servicer. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status.

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Section 2. Section 6111(a) and (b) of Title 7 are amended to read:

§ 6111. License requirements.

(a) General rule.--Except as provided under subsections (b) and (c) and section 6112 (relating to exceptions to license requirements), on and after the effective date of this section, no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, **mortgage servicer**, mortgage loan correspondent or mortgage originator as provided under this chapter. A mortgage originator may not engage in the mortgage loan business unless the mortgage originator is sponsored in the Nationwide Mortgage Licensing System and Registry by a licensed mortgage broker, mortgage lender, **mortgage servicer** or mortgage loan correspondent, person excepted from this chapter or person excepted from licensure under section 6112 and is under the direct supervision and control of the sponsoring licensee or excepted person.

(b) Licensed activity exceptions.--

(1) A mortgage lender may [act as a mortgage broker or mortgage loan correspondent without a separate mortgage broker or mortgage loan correspondent license.]:

- (i) **Act as a mortgage broker or mortgage loan correspondent without a separate mortgage broker or mortgage loan correspondent license.**
- (ii) **Act as a mortgage servicer without a separate mortgage servicer license for mortgage loans the mortgage**

lender has originated, negotiated and owns.

(2) A mortgage loan correspondent may act as a mortgage broker without a separate mortgage broker license.

(3) A person licensed as a mortgage broker may only perform the services of a mortgage broker.

(4) A person only licensed as a mortgage servicer may only perform the services of a mortgage servicer.

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Section 3. Section 6112(2), (3), (6), (7) and (8) of Title 7 are amended and the section is amended by adding a paragraph to read:

§ 6112. Exceptions to license requirements.

The following persons shall not be required to be licensed under this chapter in order to conduct the mortgage loan business:

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(2) An attorney at law not otherwise engaged in or holding himself or herself out to the public as being engaged in the mortgage loan business who acts as a mortgage broker or a mortgage originator in negotiating or placing a mortgage loan in the normal course of legal practice. The exception under this paragraph shall not apply if the attorney is compensated by any of the following:

(i) A mortgage broker.

(ii) A mortgage lender.

(iii) A mortgage loan correspondent.

(iv) A person excepted from licensure under this section.

(v) A mortgage originator.

(v.1) A mortgage servicer.

(vi) An agent of a person listed in subparagraphs (i), (ii), (iii), (iv) [and (v)], **(v) and (v.1).**

(3) A person who originates, **services** or negotiates less than four mortgage loans in a calendar year, unless determined to be engaged in the mortgage loan business by the department.

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(6) Consumer discount companies, except that a consumer discount company that acts as a mortgage broker, mortgage lender, **mortgage servicer** or mortgage loan correspondent, shall be subject to the provisions of Subchapter C (relating to mortgage loan business restrictions and requirements) and sections 6131(c)(2), (3) and (5), 6135, 6138 (relating to authority of department) and 6140(b) (relating to penalties). Employees or individuals under the direct supervision and control of licensees under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, that act as mortgage originators shall be subject to the licensing requirements of this chapter. Consumer discount companies that employ or directly supervise and control mortgage originators shall be subject to the same requirements as mortgage lenders in regard to the employment and supervision of mortgage originators.

(7) Affiliates of banking institutions and subsidiaries and affiliates of federally chartered or State-chartered credit unions. The exception under this paragraph does not apply to consumer discount companies. Notwithstanding the exception under this paragraph, subsidiaries and affiliates of federally chartered or State-chartered credit unions and affiliates of banking institutions shall:

(i) be subject to the provisions of [Subchapter C and] sections **6121(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13) and (14) (relating to general requirements), 6122(a) and (b) (relating to powers conferred on certain licensees engaged in the mortgage loan business), 6123(a) (relating to mortgage loan business prohibitions), 6124 (relating to prohibited clauses in mortgage loan documents), 6125 (relating to mortgage lending authority), 6126 (relating to requirements as to open-end loans), 6135(a)(2), (3) and (4), (b) and (c), 6138 and 6140(b);**

(ii) deliver as required to the department annually copies of financial reports made to all supervisory

agencies;

(iii) be registered with the department;

(iv) in the same manner as a mortgage lender, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5); and

(v) ensure employees required to be licensed as mortgage originators have completed the requirements under section 6131.1 (relating to prelicensing and continuing education) and have obtained the required mortgage originator license.

(8) Employees or individuals under the direct supervision and control of a mortgage broker, mortgage lender, **mortgage servicer** or mortgage loan correspondent, or a person excepted from licensure under this section, who are not otherwise required to be licensed as mortgage originators.

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(17) An individual or entity licensed under the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, if the individual or entity only engages in the mortgage loan business to the extent funds are transmitted from a mortgagor to make mortgage payments on behalf of the mortgagor in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness.

Section 4. Section 6121 of Title 7 is amended by adding a paragraph to read:

§ 6121. General requirements.

A licensee shall do all of the following:

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(15) For a mortgage servicer, if a mortgage loan is paid in full and, in the case of an open-end mortgage, a mortgage lender is no longer obligated to make future advances to the consumer, the mortgage servicer shall act in good faith to do all of the following:

(i) Request the mortgage holder release the lien on the dwelling or residential real estate and cancel the same of record and, at the time the mortgage loan agreement or promissory note evidencing the mortgage loan is returned, deliver to the consumer good and sufficient assignment, releases or other certificate, instrument or document as may be necessary to evidence the release.

(ii) Request the mortgage holder cancel any insurance provided in connection with the mortgage loan and refund to the borrower, in accordance with regulations promulgated by the Insurance Department, any unearned portion of the premium for the insurance.

(iii) If a mortgage holder has delegated the responsibility to record satisfaction of security instruments to a mortgage servicer, the mortgage servicer shall be treated as a mortgage holder for purposes of satisfying the conditions of subparagraph (i) or (ii).

Section 5. Section 6122(a) of Title 7 is amended by adding a paragraph and the section is amended by adding a subsection to read:

§ 6122. Powers conferred on certain licensees engaged in the mortgage loan business.

(a) Mortgage lenders.--If they are in compliance with the provisions of this chapter, mortgage lenders shall have the power and authority:

* * *

(8) To service first and secondary mortgage loans that are originated, negotiated and owned by the mortgage lender.

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(c) Mortgage servicers.--If a mortgage servicer is in compliance with this chapter, the mortgage servicer shall have the power and authority to collect and remit for a lender, mortgagee, note owner, note holder, trustee or primary beneficiary of a residential mortgage loan payment of principal, interest or an amount to be placed into escrow for any combination of the payment of insurance, hazard insurance or taxes.

Section 6. Sections 6123 introductory paragraph and 6131(a)(1) of Title 7 are amended and the sections are amended by adding subsections to read:

§ 6123. Mortgage loan business prohibitions.

(a) **Mortgage loan business prohibitions.**--A licensee engaging in the mortgage loan business shall not:

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(b) **Mortgage loan servicer prohibitions.**--A licensee engaging in the mortgage servicer business shall not fail to establish or attempt to establish a single point of contact with whom a borrower can communicate about foreclosure matters or loss mitigation options later than the 36th day of a borrower's delinquency, unless contact is inconsistent with applicable bankruptcy law or court order.

§ 6131. Application for license.

(a) Contents.--An application for a license under this chapter shall be on a form prescribed and provided by the department. Consistent with sections 202 E and 405 F(1) of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking and Securities Code, all applicants and licensees shall use the Nationwide Mortgage Licensing System and Registry to obtain and maintain licenses under this chapter.

(1) In the case of a mortgage broker, mortgage lender, **mortgage servicer** or mortgage loan correspondent, the application shall include the following:

- (i) The name of the applicant.
- (ii) The address of the principal place of business and any branches of the applicant.
- (iii) The full name, official title and business address of each director and principal officer of the mortgage loan business.
- (iv) Any other information that may be required by the department.

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(k) **Mortgage servicer license.**--The department shall issue a mortgage servicer license under this chapter if the applicant has:

(1) Been approved by or meets the current eligibility criteria for approval as a residential mortgage loan servicer of at least one Federal Government-sponsored entity, government corporation or Federal agency.

(2) Established a minimum net worth of \$250,000 at the time of application and maintains the minimum net worth.

(3) Been approved for and maintains as a licensee fidelity bond coverage in accordance with the guidelines established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) Obtained and maintains a surety bond in an amount that will provide coverage for the mortgage servicer in a form acceptable to the department prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The following shall apply:

- (i) The amount of the bond shall be \$500,000.
- (ii) The bond shall run to the Commonwealth and shall be for the use of the Commonwealth and for the use of the consumer who is injured by the acts or omissions of the licensee's mortgage originators that are related to the mortgage loan business regulated under this chapter. A bond shall not comply with the requirements of this section unless the bond contains a provision that the bond shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days, excluding legal holidays, Saturdays and Sundays, before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time the bond was in effect.

(5) Designated an individual as the qualifying individual for the principal place of business.

Section 7. Sections 6132(a), (b) and (d) and 6135(a)(3) of Title 7 are amended to read:

§ 6132. License fees.

(a) Initial application fees.--Except as set forth in subsection (d)(1), an applicant shall pay to the department at the time an application is filed an initial nonrefundable application fee as set forth under this subsection.

(1) For mortgage lenders and mortgage loan correspondents, \$1,500 for the principal place of business and an additional fee of \$1,500 for each branch office.

(2) For mortgage brokers, \$1,000 for the principal place of business and an additional fee of \$250 for each branch office.

(3) For mortgage originators, \$200.

(4) For mortgage servicers, \$2,500 for the principal place of business and an additional fee of \$1,250 for each branch location.

(b) Renewal fees.--Prior to each annual renewal of a license, except as set forth in subsection (d)(2), a licensee shall pay to the department a nonrefundable license renewal fee as set forth under this subsection.

(1) For mortgage lenders and mortgage loan correspondents, \$750 for the principal place of business and an additional fee of \$750 for each branch office.

(2) For mortgage brokers, \$500 for the principal place of business and an additional fee of \$250 for each branch office.

(3) For mortgage originators, \$100.

(4) For mortgage servicers, \$1,000 for the principal place of business and an additional fee of \$500 for each branch location.

* * *

(d) Exception to mortgage originator license fees.--

(1) An applicant shall not be required to pay the fee for a mortgage originator license as provided in subsection (a) if the applicant is also individually a mortgage lender applicant, mortgage loan correspondent applicant, **mortgage servicer applicant** or mortgage broker applicant.

(2) A licensee shall not be required to pay the fee for a mortgage originator license as provided in subsection (b) if the licensee is also individually a mortgage lender licensee, mortgage loan correspondent licensee or mortgage broker licensee.

§ 6135. Licensee requirements.

(a) Requirements of licensee.--

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(3) A mortgage broker, mortgage lender [or], **mortgage servicer**, mortgage loan correspondent, or a mortgage originator that is required to obtain and maintain its own bond coverage under section 6131(f)(4) (relating to application for license), shall file periodically, as determined by the department, a report with the department or the Nationwide Mortgage Licensing System and Registry, as determined by the department, setting forth such information as the department shall require concerning the first or secondary mortgage loan business conducted by the licensee. Licensees who fail to file the required report at the date required by the department may be subject to a penalty of \$100 for each day after the due date until the report is filed.

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Section 8. Title 7 is amended by adding a section to read:

§ 6141. **Mortgage servicers.**

(a) **Regulatory coordination.**--In order to implement this chapter as applicable to mortgage servicers, the following apply:

(1) Subject to paragraph (2), the department shall promulgate regulations which effectively incorporate the Consumer Financial Protection Bureau's mortgage servicer regulations at 12 CFR Pt. 1024, Subpt. C (relating to mortgage servicing), other than 12 CFR 1024.30 (relating to scope).

(2) When the Federal regulations under paragraph (1) are altered, the department shall promulgate regulations making the appropriate incorporation.

(3) Regulations under this subsection shall not be subject to any of the following:

(i) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(ii) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(iii) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(b) Failure of regulatory coordination.--If an alteration of Federal regulations under subsection (a)(2) results in a complete lack of Federal regulations in the area, all of the following apply:

(1) The version of the Pennsylvania regulations in effect at the time of the alteration shall remain in effect for two years.

(2) During the time period under paragraph (1), the department shall promulgate replacement regulations.

Section 9. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The addition of 7 Pa.C.S. § 6141.

(ii) This section.

(2) The remainder of this act shall take effect upon the effective date of regulations promulgated under 7 Pa.C.S. § 6141.

APPROVED--The 22nd day of December, A.D. 2017.

TOM WOLF