

**South Carolina Code of Laws
Unannotated
Current through the end of the 2012 Session**

Title 37 - Consumer Protection Code

CHAPTER 22.

MORTGAGE LENDING

SECTION 37-22-110. Definitions.

The following definitions apply in this chapter:

(1) "Act as a mortgage broker" means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by: (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent, as that term is defined in 24 C.F.R. Part 202 et seq., whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. "Act as a mortgage broker" also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b).

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

(3) "Administrator" means the Administrator of the Department of Consumer Affairs (department) or the administrator's designees.

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

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

(6) "Board" means the State Board of Financial Institutions as that term is used in Chapter 1, Title 34.

(7) "Borrower" means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person's ownership interest in the dwelling is or is to be subject to the security interest.

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

(9) "Branch office" means an office of the licensee that is separate and distinct from the licensee's principal office.

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

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

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

(11) "Commissioner" means the designee of the State Board of Financial Institutions for purposes of licensing and regulation of mortgage lenders and mortgage loan originators pursuant to this chapter.

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

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

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

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

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

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

(18) "Exempt person" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) "Individual servicing a mortgage loan" means an employee of a mortgage lender licensed in this State, that:

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

(i) the borrower is in default; or

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

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

(c) otherwise finalizes collection through the foreclosure process.

(23) "Licensee" means a person who is licensed pursuant to this chapter.

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

(25) "Loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of "loan originator" does not include an exempt person described in item (18) of this section or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are "loan originators" as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

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

(27) "Managing principal" means a natural person who meets the requirements of Section 37-22-140(C) and who agrees to be primarily responsible for the operations of a licensed mortgage lender.

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

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

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

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

(32) "Nontraditional mortgage product" means a mortgage product other than a thirty-year fixed rate mortgage loan.

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

(34) "Processor or underwriter" means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal

identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

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

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

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 37-22-270.

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

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

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

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

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

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

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

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-120. Licensing requirements.

(A) Without first obtaining a license pursuant to this chapter it is unlawful for a person, other than an exempt person, doing business in this State to:

(1) act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title; or

(2) circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of this chapter.

(B) It is unlawful for a person to employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to this chapter. An exempt person is not subject to this subsection.

(C) The license of a loan originator is not effective during a period that the person is not employed by a mortgage lender licensed pursuant to this chapter.

(D) If a loan originator ceases to be employed by a mortgage lender licensed pursuant to this chapter, the loan originator and the mortgage lender by whom that person is employed promptly shall notify the commissioner in writing. The mortgage lender's notice must include a statement of the specific reason or reasons for the termination of the loan originator's employment. The reason for termination is confidential information and must not be released to the public.

(E) A loan originator must not be employed simultaneously by more than one mortgage lender licensed pursuant to this chapter.

(F) Independent contractors, except for exempt persons, must be licensed separately. Processors and underwriters who are independent contractors must be licensed as provided in Section 37-22-110(34)(c).

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-130. Contested case proceedings; appeals.

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

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be served upon the commissioner and all parties of record. The final decision of the administrative law judge may be appealed as provided in Section 1-23-380 and 1-23-610 or Chapter 23, Title 1.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-140. Application for licensure; information required; identification of managing principal; filing fee; surety bond; issuance of license.

(A) A person desiring to obtain a license pursuant to this chapter shall make application for licensure to the commissioner on forms prescribed by the commissioner. The application must contain the information the commissioner considers necessary including, but not limited to, the applicant's:

(1) name, address, and social security number or, if applicable, Employer Identification Number (EIN);

(2) form and place of organization, if applicable;

(3) proposed method of and locations for doing business, if applicable;

(4) qualifications and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration, (ii) a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses, and (iii) a conviction of, or plea of guilty or nolo contendere to, a felony;

(5) financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and

(6) consent to a national and state fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principal or a branch manager shall consent to a national and state fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity: (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(B) In addition to the requirements imposed by the commissioner in subsection (A), each applicant for licensure as a loan originator shall:

(1) have attained the age of at least eighteen years;

(2) work for a licensed mortgage lender;

(3) have satisfactorily completed prelicensing education of at least twenty hours and a written examination approved pursuant to 12 U.S.C. 5101 et seq. To satisfy the twenty hours of prelicensing education, an applicant may show proof of the equivalent of twenty or more semester hours of satisfactorily completed course work in real estate finance or real estate law or course work that is equivalent to the education requirements in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289 if the course work counts toward the successful completion of a degree that is baccalaureate level or more advanced with a major or minor in finance, accounting, business administration, real estate finance economics, or similar baccalaureate or more advanced degree, approved by the commissioner, from an accredited college or university. The coursework must be approved pursuant to 12 U.S.C. 5101 et seq.;

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

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

(C) In addition to the requirements of subsection (A) of this section, each applicant for licensure as a mortgage lender at the time of application and at all times after that shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described in item (1).

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience described in item (1).

(4) If the applicant is a limited liability company, at least one of its members or managers shall have the experience described in item (1).

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

(D) Each applicant shall identify one person meeting the requirements of subsections (B) and (C) to serve as the applicant's managing principal.

(E) Every applicant for initial licensure shall pay a filing fee of one thousand dollars for licensure as a mortgage lender or fifty dollars for licensure as a loan originator, in addition to the actual cost of obtaining credit reports and national and state fingerprint-based criminal history record checks. If a licensed loan originator changes employment, a new license must be issued and a fee of twenty-five dollars must be paid.

(F) A mortgage lender shall post and maintain a surety bond in an amount determined by the commissioner, based on the total dollar amount of mortgage loans originated in a calendar year in this State pursuant to the following: (i) dollar volume of mortgage loans from \$0 to \$49,999,999, surety bond of \$50,000, (ii) dollar volume of mortgage loans from \$50,000,000 to \$249,999,999, surety bond of \$100,000, (iii) dollar volume of mortgage loans greater than \$250,000,000 surety bond of \$150,000. In no case is the surety bond less than fifty thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the commissioner, must be executed to the commissioner, and must be for the use of the State for the recovery of expenses, fines, and fees, or any of them, levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the mortgage lender. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond is filed with the commissioner before the termination of the previous bond. If the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to subsection (A).

(G) Any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements of subsection (B), upon payment of the applicable fee, meets the qualifications for licensure as a loan originator subject to the provisions of subsection (I).

(H) Each principal office and each branch office of a licensed mortgage lender at which business is conducted must be licensed pursuant to this chapter and must be issued a separate license. A licensed mortgage lender shall file with the commissioner an application on a form prescribed by the commissioner which identifies the address of the principal office and each branch office and branch manager. A licensing fee of one hundred fifty dollars must be assessed by the commissioner for each branch office issued a license.

(I) If the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business is to be operated honestly, fairly, and

efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, the commissioner shall issue a license to the applicant. If the commissioner does not make that determination, the commissioner shall refuse to license the applicant and shall notify him of the denial.

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

(K) A person who obtains a license as a mortgage lender, upon notice to the commissioner on a form prescribed by the commissioner, may act as a mortgage broker as defined in Section 37-22-110(1). The commissioner shall provide to the administrator notification of which mortgage lenders also are acting as brokers. A mortgage lender who also acts as a mortgage broker is not required to obtain a license as a mortgage broker pursuant to Chapter 58, Title 40, and is not subject to regulation by the administrator, except that the mortgage lender acting as a mortgage broker must comply with Sections 40-58-70, 40-58-75, and 40-58-78.

(L)(1) A person with three years' experience as a loan originator who applies for a license as a loan originator and who has completed and filed with the Nationwide Mortgage Licensing System and Registry all information, documents, and requirements for licensure pursuant to this chapter and who has been assigned a unique identifier by the registry must be provided a provisional license as a loan originator before the commissioner takes action on his application if the applicant is employed by a mortgage lender licensed pursuant to this chapter and a senior officer or managing principal of that licensee attests to the commissioner that:

(a) the applicant, within the six-month period before the date of application for licensure, has not been acting as a registered loan originator or a state-licensed loan originator in another state under provisions of Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and:

(i) the applicant has never had a loan originator license denied, revoked, or suspended in any governmental jurisdiction;

(ii) the applicant during the previous five years, ending on the date of the filing of the current application, has not had an application for a professional license denied, a professional license revoked, or any adverse action taken on a professional license;

(iii) the applicant has not been convicted of a felony that would otherwise authorize the commissioner to deny a license;

(iv) the application meets all of the applicable requirements of this chapter for licensure; and

(v) the licensee will be responsible for the acts of the applicant during the period that such application is pending; or

(b) the applicant is currently, or has within the six-month period before the date of the application, been acting as a registered loan originator or a state-licensed loan originator in another state under provisions of Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and the applicant has never had a loan originator license denied, revoked, or suspended in any governmental jurisdiction and has not been convicted of a felony that would otherwise authorize the commissioner to deny a license.

(2) A provisional license issued pursuant to this section expires on the earlier of the following:

(a) the date upon which the commissioner issues or denies the permanent license applied for; or

(b) ninety days from the date the provisional license is issued.

(3) The commissioner may deny or suspend the rights of a licensee pursuant to this chapter to employ a loan originator acting under item (1) of this subsection if the commissioner finds that the licensee, the senior officer, or managing principal does not make the certification or undertaking set forth in item (1)(b) of this subsection in good faith.

(M) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete, the licensee promptly shall file a correcting amendment to the information contained in the document.

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

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-150. Expiration and renewal of licenses; fingerprint check; assignment or transfer of license.

(A) All licenses issued by the commissioner pursuant to this chapter expire annually on the thirty-first day of December or on another date that the commissioner may determine. The license is invalid after that date unless renewed. The renewal period for all licensees is from November first through December thirty-first annually or on another date the commissioner may determine. A licensee desiring to renew its license must submit an application to the commissioner on forms and containing information the commissioner requires. Applications received after December thirty-first or another date the commissioner determines, are late and the late fees in subsection (B) apply. A license may be renewed by compliance with this section and by paying to the commissioner, in addition to the actual cost of obtaining credit reports and national and state fingerprint-based criminal history record checks as the commissioner may require, a renewal fee as prescribed by the board for each of the following:

(1) for a licensed mortgage lender, an annual renewal fee of no more than eight hundred dollars and no more than one hundred fifty dollars for each branch office; and

(2) for a licensed loan originator, an annual fee of no more than fifty dollars.

(B) If a license of a licensed mortgage lender is not renewed during the renewal period, a late fee of not more than five hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(1), must be assessed. If a license of a licensed loan originator is not renewed during the renewal period, a late fee of not more than one hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(2) of this section, must be assessed as a late fee to a renewal. If a licensee fails to renew its license within thirty days after the date the license expires or otherwise fails to maintain a valid license, the commissioner shall require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any fee that has accrued.

(C) At any time required by the commissioner, each person described in Section 37-22-140 shall furnish to the commissioner consent to a national and state fingerprint-based criminal history record check and a set of fingerprints in a form acceptable to the commissioner. Refusal to consent to a criminal history record check may constitute grounds for the commissioner to deny renewal of the license of the person as well as the license of another person by which he is employed, over which he has control, or as to which he is the current or proposed managing principal or a current or proposed branch manager.

(D) A license issued pursuant to this chapter is not assignable or transferable. Control of a licensee must not be acquired through a stock purchase or other device without the prior written consent of the commissioner. The commissioner may not give written consent if the commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to Section 37-22-200 are applicable to the acquiring person.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-160. Continuing professional education.

(A) As a condition of license renewal, a licensee must complete at least eight hours of continuing professional education annually for the purpose of enhancing professional competence and responsibility. The continuing professional education completed must be reported to the commissioner annually. Documentation of courses completed must be maintained by all licensees. This documentation is subject to inspection by the commissioner for up to two years after the date of course completion.

(B) Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.

(C) If a licensee fails to complete the continuing professional education before the license expiration date, his license expires and he shall pay a penalty of not more than one hundred dollars, in addition to other fees or penalties that have accrued, to reinstate the license.

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

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-170. Managing principal; branch offices; notification of commissioner of designation and change of managing principal or branch manager.

A mortgage lender licensed pursuant to this chapter shall have a managing principal who operates the business under that manager's full charge, control, and supervision. A mortgage lender may operate a branch office subject to the requirements of this chapter. Each principal and branch office of a mortgage lender licensed pursuant to this chapter shall have a branch manager who meets the requirements of Section 37-22-140(B) and (C)(1). Each mortgage lender licensed pursuant to this chapter shall file a form prescribed by the commissioner indicating the business's designation of managing principal and branch manager for each branch and their acceptance of the responsibility. The managing principal for a licensee's business also may serve as the branch manager of one of the licensee's branch offices. A mortgage lender licensed pursuant to this chapter shall notify the commissioner of a change in its managing principal or any branch manager. The license of a licensee who does not comply with this provision must be suspended pursuant to Section 37-22-200 until the licensee complies with this section. A licensee who operates as a sole proprietorship is a managing principal for the purposes of this chapter.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-180. Notice of change of address; display of license.

(A) A licensee shall report to the commissioner a change of address of the principal place of business or a branch office at least seven days before the change. Change of address notification of a licensed location must be accompanied by a fee of twenty-five dollars.

(B) A mortgage lender licensed pursuant to this chapter shall display in plain view in its principal office and in each branch the license issued by the commissioner. A loan originator licensed pursuant to this chapter shall display in each branch office in which mortgage loans are originated a copy of the license issued by the commissioner.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-190. Prohibited activities; violation of state or federal law.

(A) In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person licensed pursuant to this chapter, in the course of a mortgage loan origination, to:

(1) misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;

(2) refuse improperly or fail to issue a satisfaction of a mortgage pursuant to Section 29-3-310;

(3) fail to account for or deliver to a person entitled to receive funds, documents, or other things of value obtained in connection with a mortgage loan including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage lender or loan originator is not entitled to retain under the circumstances;

(4) pay, receive, or collect in whole or in part any commission, fee, or other compensation for a mortgage loan origination in violation of this chapter including any unlicensed person other than an exempt person;

(5) charge or collect a fee or rate of interest or to make or service a mortgage loan with terms or conditions or in a manner contrary to the provisions of this chapter;

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

(7) fail to disburse funds in good faith and in accordance with a written commitment or agreement to make a mortgage loan that has been accepted by the borrower;

(8) engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person;

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

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

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

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

(a) consider additional appropriate property information;

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

(c) correct errors in the appraisal report;

(11) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U. S.C. Section 2605 and Section 2609, and regulations adopted pursuant to them by the Secretary of the Department of Housing and Urban Development and state law;

(12) fail to provide within a reasonable time, upon written request of a borrower, a payment history statement in a form easily understood by the borrower including payment dates and amounts and charges within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement must be provided without charge once during each year of the term of the obligation. If additional statements are requested, the borrower may be charged a reasonable fee, not to exceed five dollars for each additional statement;

(13) take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than five thousand dollars;

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

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

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

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

(B) A violation of a state or federal law applicable to a business covered by this chapter is a violation of this chapter and may be enforced by the commissioner.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-200. Powers of commissioner relating to denial, suspension, revocation or refusal to renew license; surrender; investigations and subpoena of documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) In addition to other powers pursuant to this chapter, upon finding that an action of a person is in violation of this chapter, the commissioner may order the person to cease from the prohibited action. If the person subject to the order fails to request a contested case hearing in accordance with Section 37-22-130, or if the person requests the hearing and it is denied or dismissed, and the person continues to engage in the prohibited action in violation of the commissioner's order, the person is subject to an administrative penalty that may not exceed twenty-five thousand dollars for each violation of the commissioner's order. The penalty provision of this section is in addition to and not instead of another provision of law for failure to comply with an order of the commissioner.

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

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

(G) If the commissioner has reasonable grounds to believe that a licensee or other person has violated this chapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner, either personally or by a person duly designated by the commissioner, at any time may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. The reasonable cost of this investigation or examination must be charged against the licensee. The commissioner may require the licensee or other person to submit a consent to a national and state

fingerprint-based criminal history record check and a set of that person's fingerprints in a form acceptable to the commissioner in connection with an examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints is grounds for disciplinary action.

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

(I) The commissioner, at the licensee's expense, may conduct routine examinations of the books and records of a licensee to determine compliance with this chapter.

(J) The commissioner shall cooperate and share information with an agency of this State, other states, or the federal government concerning activity regulated by this chapter. The commissioner shall accept or participate in examinations conducted by one of these agencies.

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

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

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

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-210. Commissioner's records; segregated escrow funds; licensee ceasing business activities.

(A) The commissioner shall keep a list of all applicants for licensure pursuant to this chapter which includes the date of application, name, and place of residence and whether the license was granted or refused.

(B) The commissioner shall keep a current roster containing the names and places of business of all licensees and containing their respective loan originators. The rosters must: (i) be kept on file in the office of the commissioner, (ii) contain information regarding all orders or other action taken against the licensees, loan originators, and other persons, and (iii) be open to public inspection.

(C)(1) A licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records prescribed by the commissioner. Records must be preserved for three years unless the commissioner prescribes otherwise for particular types of records. A licensee should develop, maintain, and test disaster recovery plans for all records that are maintained. The recordkeeping requirements imposed by the commissioner or this subsection must not be greater than those imposed by applicable state or federal law. Licensee's records may be maintained electronically, if approved by the commissioner, so long as they are readily accessible for examination by the commissioner.

(2) Beginning on January 1, 2010, in addition to the records required to be maintained by licensees pursuant to subitem (1), each licensee shall maintain a mortgage log that contains these specific data elements: (i) credit score of the borrower, (ii) adjustable or fixed type of loan, (iii) term of the loan, (iv) annual percentage rate of the loan, and (v) appraised value of the collateral. Each licensee shall submit to the commissioner by March thirty-first of each year its mortgage log data and the data identified in 12 C.F.R. Part 203 et seq., in a form determined by the commissioner. The licensee shall pay a fine of one

hundred dollars a day for late or incomplete data submissions. Data collected by the commissioner pursuant to this section is confidential and may be released to the public only in composite form. The commissioner annually shall submit to the department, in a form prescribed by the department and no later than April thirtieth, the data that it collected. The department shall prepare and make available to the public a report based on the data. The report must be available by June thirtieth each year.

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

(E) A licensee shall maintain in a segregated escrow fund or trust account funds that come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account must be held on deposit in a federally insured financial institution. Escrow funds must be accounted for in compliance with the rules under RESPA.

(F) A licensee clearly shall display the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry on all mortgage loan forms, solicitations, or advertisements including business cards or websites and any other documents furnished in connection with a mortgage loan transaction.

(G) A licensee ceasing activities regulated by this chapter and desiring no longer to be licensed shall inform the commissioner at least seven days in advance. The licensee shall include with the notification a plan of withdrawal that includes a timetable for the disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records after that.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-220. Maintenance of records by licensee; annual mortgage reports.

(A) A licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the commissioner to determine if the licensee is complying with the provisions of this chapter and other state and federal laws. The recordkeeping system of a licensee is sufficient if it makes the required information reasonably available. The records need not be kept in the place of business where loans are made if the commissioner is given free access to the records wherever located and the licensee pays the reasonable cost of their examination.

(B) On or before March thirty-first each year, a licensee shall file with the commissioner an annual report in the form prescribed by the commissioner relating to all mortgage loans made, serviced, or brokered by it. The licensee shall pay a fine of one hundred dollars a day for each late or incomplete annual report.

(C) The mortgage loan report shall include, but is not limited to, the total number and dollar amounts in connection with all mortgage loans, of:

- (1) first and subordinate lien loans originated by licensee and closed in the name of another party;
- (2) first and subordinate lien loans originated by another party and closed in the name of the licensee;
- (3) first and subordinate lien loans originated by and closed in the name of the licensee;
- (4) first and subordinate lien loans originated by and closed in the name of another party but funded by licensee;
- (5) loans purchased by licensee;
- (6) first and subordinate lien loans serviced by licensee;

(7) loans owned with and without servicing rights;

(8) loans sold with and without servicing rights;

(9) loans paid off before and at maturity;

(10) unpaid loans at the beginning and end of the reporting year;

(11) delinquent loans that are 30-59, 60-89, and ninety days or more delinquent, of all the loans the licensee owned as of December thirty-first;

(12) loans in foreclosure as of December thirty-first and foreclosed in the previous calendar year by licensee;

(13) mortgage loans charged against reserve for loan losses as a result of foreclosures during the reporting year; and

(14) loans repurchased during the previous calendar year.

(D) The annual report also must include the total gross revenue earned in this State under this license, the total dollar amount of points paid to the licensee by borrowers on first and subordinate lien mortgage loans, the total dollar amount of points paid to brokers by the licensee on first and subordinate lien mortgage loans, including yield spread premiums, and the lending institution, maximum amount available, outstanding balance, and expiration date of licensee's four largest warehouse lines of credit during the previous calendar year.

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

(F) The commissioner annually shall submit to the department, in a form prescribed by the Department of Consumer Affairs and no later than April thirtieth, the data that it collected. The department shall prepare and make available to the public a report based on the data. The report must be available by June thirtieth each year.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-230. Violations of chapter; penalties.

A person who wilfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each violation. Each transaction involving the unlawful making or servicing of a mortgage loan is a separate offense.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-240. Criminal background checks.

(A) The South Carolina Law Enforcement Division (SLED) shall provide a criminal history record check to the commissioner for a person who has applied for or holds a mortgage lender or loan originator license through the commissioner pursuant to this chapter.

(B) In addition, if a person described in subsection (A) is a corporation, partnership, limited liability company, association, or trust, SLED shall provide a criminal history record check to the commissioner for a person who has control of that person, or who is the managing principal or a branch manager of that person.

(C) The commissioner shall provide to SLED, along with the request, the fingerprints of the person, additional information required by SLED, records check fees required by SLED and the Federal Bureau of Investigation (FBI), and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the state or national repositories. Using the information supplied by the commissioner to SLED, the applicant must undergo a state criminal record check, supported by fingerprints, by SLED, and a national criminal record check, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the commissioner. SLED is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to SLED or the FBI or both. The commissioner shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-250. Funds payable to commissioner.

All funds specified in this chapter must be paid to the commissioner, must be used to implement the provisions of this chapter, and are nonrefundable.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-260. Promulgation of regulations.

(A) The commissioner may promulgate regulations necessary to effectuate the purposes of this chapter.

(B) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner may waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(C) For the purposes of implementing an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited reviews, expedited licensing procedures, and grandfather provisions.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.

SECTION 37-22-270. Participation in Nationwide Mortgage Licensing System and Registry.

(A) The commissioner may participate in a Nationwide Mortgage Licensing System and Registry and may:

(1) facilitate and participate in the establishment and implementation of the Nationwide Mortgage Licensing System and Registry;

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

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

(4) authorize the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the commissioner's behalf in order to receive national and state criminal history background record checks from the FBI and SLED and furnish the fingerprints to SLED to retain for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to SLED, or the FBI or both in accordance with Sections 37-22-140 and 37-22-240;

(5) authorize the Nationwide Mortgage Licensing System and Registry to collect credit reports on the commissioner's behalf for all licensees in accordance with Section 37-22-140;

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

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

(8) provide information to and receive information from the Nationwide Mortgage Licensing System and Registry;

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

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

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

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

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

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

(F) The commissioner shall develop a plan that ensures an orderly transition to the Nationwide Mortgage Licensing System and Registry. This transition plan must address issues of prelicensing education, written examinations, credit reports, and national and state fingerprint-based criminal histories and record checks.

HISTORY: 2009 Act No. 67, Section 2, eff January 1, 2010.