

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/3/03*  
**A Bill**

**Act 554 of 2003**  
HOUSE BILL 1668

5 By: Representative Hutchinson  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO REPEAL CERTAIN PORTIONS OF THE MORTGAGE  
10 LOAN COMPANY AND LOAN BROKER ACT; TO ENACT THE  
11 FAIR MORTGAGE LENDING ACT TO PROVIDE LICENSING  
12 STANDARDS FOR MORTGAGE BROKERS; AND FOR OTHER  
13 PURPOSES.  
14

**Subtitle**

15 AN ACT TO REPEAL CERTAIN PORTIONS OF THE  
16 MORTGAGE LOAN COMPANY AND LOAN BROKER  
17 ACT AND TO ENACT THE FAIR MORTGAGE  
18 LENDING ACT TO PROVIDE LICENSING  
19 STANDARDS FOR MORTGAGE BROKERS.  
20  
21  
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code Title 23, Subchapter 39, is amended to add a  
26 new subchapter as follows:

27 23-39-501. Title.

28 This subchapter may be referred to as the "Fair Mortgage Lending Act."  
29

30 23-39-502. Definitions.

31 For purposes of this subchapter:

32 (1) "Branch manager" means the individual whose principal office is  
33 physically located in, who is in charge of, and who is responsible for the  
34 business operations of a branch office of a mortgage broker or mortgage  
35 banker;

36 (2) "Branch office" means an office of a licensee that is separate and



1 distinct from the licensee's principal office;

2 (3) "Commissioner" means the Arkansas Securities Commissioner and  
3 includes the commissioner's designees;

4 (4) "Control" means the power to vote more than twenty percent (20%)  
5 of outstanding voting shares or other interests of a corporation,  
6 partnership, limited liability company, limited partnership, association, or  
7 trust;

8 (5) "Employee" means an individual who is employed by a mortgage  
9 broker, mortgage banker, or mortgage servicer and who is treated as an  
10 employee for purposes of compliance with the federal income tax laws;

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

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

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

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

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

25 (iv) An insurance company licensed or authorized to  
26 conduct business with the State Insurance Department;

27 (v) A small business investment corporation licensed under  
28 the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq.;

29 (vi) A real estate investment trust as defined in  
30 26 U.S.C. § 856;

31 (vii) A state or federally chartered bank, savings bank,  
32 savings and loan association, or credit union, or a direct, wholly owned  
33 subsidiary of these organizations whose accounts are insured by the Federal  
34 Deposit Insurance Corporation or the National Credit Union Administration;

35 (viii) An agricultural loan organization that is subject  
36 to licensing, supervision, or auditing by the United States Agricultural

1 Stabilization and Conservation Service, Commodity Credit Corporation, Farmers  
2 Home Administration, Farm Credit Administration, or the United States  
3 Department of Agriculture;

4 (ix) A nonprofit corporation that:

5 (a) Qualifies as a nonprofit entity under section  
6 501(c)(3) of the Internal Revenue Code;

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

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

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

14 (b) Notwithstanding subdivision (6)(B)(x)(a) of this  
15 section, an exempt person does not include a real estate agent or broker who  
16 receives compensation of any kind in connection with the referral, placement,  
17 or origination of a mortgage loan;

18 (xi) A person who, as a seller of real property receives  
19 mortgages, deeds of trust, or other security instruments on real estate as  
20 security for a purchase money obligation, if:

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

24 (b) The maker of the liens or mortgages does not  
25 sell the liens or mortgages in the secondary market other than to affiliated  
26 or subsidiary persons;

27 (xii) An individual, or husband and wife, who provides  
28 funds for investment in loans secured by a lien on real property, on his or  
29 her own account, who does not:

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

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

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

1                   (xiv) A person doing business under the laws of Arkansas  
2 or the United States relating to any broker-dealer, agent, investment  
3 adviser, or investment adviser representative registered with the State  
4 Securities Department;

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

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

11                   (xvii) An officer or employee of an exempt person  
12 described in subdivisions (6)(B)(ii) through (xvi) of this subsection if  
13 acting in the scope of employment for the exempt person; and

14                   (xviii) Other persons as the commissioner may by rule or  
15 order designate;

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

18                   (8) "Loan officer" means an individual other than an exempt person  
19 described in subdivision (6) of this section who, in exchange for  
20 compensation as an employee of a mortgage broker or a mortgage banker  
21 licensed under this subchapter, solicits, accepts, or offers to accept  
22 applications for mortgage loans;

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

26                   (10) "Managing principal" means a person who meets the requirements of  
27 § 23-39-505, and who agrees to be primarily responsible for the operations of  
28 a licensed mortgage broker or mortgage banker;

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

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

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

1 loan;

2 (B) Solicits or offers to solicit a mortgage loan;

3 (C) Negotiates the terms or conditions of a mortgage loan; or

4 (D) Issues mortgage loan commitments or interest rate guarantee  
5 agreements to borrowers;

6 (13) "Mortgage loan" means a loan primarily secured by either a  
7 mortgage or a deed of trust on real property;

8 (14) "Mortgage servicer" means a person who, under a contract with a  
9 mortgage banker, receives:

10 (A) Funds or credits from or on behalf of a borrower in payment  
11 for a mortgage loan; or

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

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

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

21  
22 23-39-503. License required - Licensee records.

23 (a)(1) It is unlawful for any person located in Arkansas, other than  
24 an exempt person, to act or attempt to act, directly or indirectly, as a  
25 mortgage broker, mortgage banker, loan officer, or mortgage servicer, without  
26 first obtaining a license from the Arkansas Securities Commissioner under  
27 this subchapter.

28 (2) Each mortgage banker and mortgage servicer that was exempt  
29 from the licensing requirements of §§ 23-39-101- 23-39-309 or held a valid  
30 license under §§ 23-39-101- 23-39-309 as of December 31, 2003 shall have one  
31 hundred and twenty (120) days from the end of its fiscal year ending in 2004  
32 to register under this section.

33 (3) Each loan officer shall have until July 1, 2004 to register  
34 under this section.

35 (b) It is unlawful for any person, other than an exempt person, to act  
36 or attempt to act, directly or indirectly, as a mortgage broker, mortgage

1 banker, loan officer, or mortgage servicer with any person located in  
2 Arkansas without first obtaining a license from the commissioner under this  
3 subchapter.

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

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

11 (2) When a loan officer ceases to be employed by a mortgage  
12 broker or mortgage banker licensed under this subchapter, the loan officer  
13 and the mortgage broker or mortgage banker by whom that person was employed  
14 shall notify the commissioner in writing within thirty (30) days from the  
15 date on which the loan officer ceased to be employed.

16 (3) Any licensee that does not comply with this section shall  
17 pay a fine equal to ten dollars (\$10.00) for each day that he or she fails to  
18 notify the commissioner as provided in subdivision (d)(2) of this section,  
19 not to exceed six hundred dollars (\$600).

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

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

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

30  
31 23-39-504. Rulemaking authority.

32 The Arkansas Securities Commissioner may adopt any rules that he or she  
33 deems necessary to carry out the provisions of this subchapter, to provide  
34 for the protection of the borrowing public, and to instruct mortgage lenders  
35 or brokers in interpreting this subchapter.

36

1           23-39-505. Qualifications for licensure - Issuance.

2           (a)(1) Any person, other than an exempt person, desiring to obtain a  
3 license as a loan officer, mortgage banker, mortgage broker, or mortgage  
4 servicer, shall make written application for licensure to the commissioner in  
5 the form prescribed by the Arkansas Securities Commissioner.

6           (2) The application may require that the information be  
7 submitted in electronic format.

8           (3) In addition to any other information required under this  
9 subchapter, and in accordance with rules adopted by the commissioner, the  
10 application shall contain any information the commissioner deems necessary,  
11 and shall include the following:

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

14                   (B) The applicant's form of business and place of  
15 organization, if applicable;

16                   (C) The applicant's proposed method of, and locations for,  
17 doing business, if applicable; and

18                   (D)(i) The qualifications and business history of the  
19 applicant and any partner, officer, or director, any person occupying a  
20 similar status or performing similar functions, or any person directly or  
21 indirectly controlling the applicant.

22                           (ii) The qualifications and business history of  
23 persons under subdivision (a)(3)(D) of this section shall include:

24                                   (a) A description of any injunction or  
25 administrative order, including any denial to engage in a regulated activity,  
26 by any state or federal authority to which the person is, has been, or has  
27 sought to be, subject;

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

32                                   (c) Any felony convictions.

33                   (E)(i) With respect to an application for licensing as a  
34 mortgage banker, mortgage broker, or mortgage servicer the applicant's  
35 financial condition and business history; and

36                           (ii) With respect to the application for licensing

1 as a loan officer, the applicant's business history.

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

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

6 (2) Have satisfactorily completed any educational and testing  
7 requirements as the commissioner may by rule or order impose.

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

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

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

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

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

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

28 (e) Each applicant for initial licensure shall pay a filing fee of  
29 seven hundred fifty dollars (\$750) for licensure as a mortgage broker,  
30 mortgage banker, or mortgage servicer, or fifty dollars (\$50) for licensure  
31 as a loan officer.

32 (f)(1) Each mortgage banker and mortgage servicer shall post a surety  
33 bond in the amount of one hundred thousand dollars (\$100,000), and each  
34 mortgage broker shall post a surety bond in the amount of fifty thousand  
35 dollars (\$50,000).

36 (2) The surety bond shall be in the form prescribed by the



1 commissioner and shall run to the state for the benefit of any claimants  
2 against the licensee to secure the faithful performance of the obligations of  
3 the licensee under this subchapter.

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

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

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

11 (6) Any appropriate deposit of cash or securities shall be  
12 accepted in lieu of any bond that is required.

13 (g) Each applicant filing for licensure as a mortgage banker, mortgage  
14 broker, or mortgage servicer shall file with the commissioner as part of his  
15 or her application, audited financial statements that are prepared in  
16 accordance with generally accepted accounting principals as promulgated by  
17 the Financial Accounting Standards Board, accompanied by an unqualified  
18 opinion acceptable to the commissioner, and dated within twelve (12) months  
19 preceding the date on which the application is filed, that reflect that the  
20 applicant has a net worth of at least twenty-five thousand dollars (\$25,000).

21 (h) Any general partner, manager of a limited liability company, or  
22 officer of a corporation who individually meets the requirements under  
23 subsection (b) of this section shall, upon payment of the applicable fee, be  
24 deemed to have met the qualifications for licensure as a loan officer.

25 (i)(1) Each principal office and each branch office of a mortgage  
26 broker, mortgage banker, or mortgage servicer licensed under this subchapter  
27 shall obtain a separate license.

28 (2) A licensed mortgage broker, mortgage banker, or mortgage  
29 servicer shall file with the commissioner an application in the form  
30 prescribed by the commissioner that identifies the address of the principal  
31 office, each branch office, and each branch manager.

32 (3) The commissioner shall assess a filing fee of one hundred  
33 dollars (\$100) for each branch office that is issued a license.

34  
35 23-39-506. License renewal - Termination.

36 (a)(1) Each licensed mortgage broker, mortgage banker, and mortgage

1 servicer wishing to renew a license shall file a renewal application with the  
2 Arkansas Securities Commissioner within one hundred twenty (120) days after  
3 the end of the licensee's fiscal year.

4 (2) Each person under subdivision (a)(1) of this section may  
5 renewed its license by:

6 (A) Filing a renewal application on the form prescribed by  
7 the commissioner;

8 (B) Filing audited financial statements through the end of  
9 the licensee's previous fiscal year that are prepared in accordance with  
10 generally accepted accounting principals as promulgated by the Financial  
11 Accounting Standards Board, accompanied by an unqualified opinion acceptable  
12 to the commissioner; and

13 (C) By paying an annual renewal fee of three hundred fifty  
14 dollars (\$350) and one hundred dollars (\$100) for each branch office.

15 (b) A loan officer's license shall become invalid on the last day of  
16 the twelfth (12th) month from the date of issuance unless, on or before that  
17 date or another date as the commissioner designates, the loan officer files a  
18 renewal application on the form prescribed by the commissioner and pays an  
19 annual renewal fee of fifty dollars (\$50).

20 (c)(1) The failure of a mortgage broker, mortgage banker, or mortgage  
21 servicer to timely file a renewal application shall subject that person to a  
22 late fee of fifty dollars (\$50.00) for each day, up to a maximum of thirty  
23 (30) days, that the renewal application is late.

24 (2) The late fee shall be assessed in addition to the renewal  
25 application fee under subsection (a) of this section.

26 (3) If a mortgage broker, mortgage banker, or mortgage servicer  
27 fails to file a renewal application within thirty (30) days after the date  
28 the renewal application is due, the commissioner may deem the license to be  
29 abandoned and terminated, and may require the licensee to comply with the  
30 requirements for the initial issuance of a license under this subchapter.

31 (4) The commissioner shall not reissue any license for which a  
32 late fee has accrued as a result of a person's failure to timely renew a  
33 license, unless the late fee has been paid.

34 (d) Licenses issued under this subchapter are not transferable.

35 (e)(1) Control of a licensee shall not be acquired through a stock or  
36 equity purchase, transfer of interest, or other device without the prior

1 written consent of the commissioner.

2 (2) Any person seeking to acquire control of a licensee shall:

3 (A) Pay a fee of one hundred dollars (\$100);

4 (B) Submit to the commissioner the information required  
5 under § 23-39-505(a)(3)(D) of this subchapter and any other information  
6 deemed relevant by the commissioner;

7 (C) Certify that the licensee continues to meet the  
8 qualifications under § 23-39-505 of this subchapter.

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

12  
13 23-39-507. Continuing education.

14 (a) In addition to the other licensing requirements under this  
15 subchapter, as a condition of license renewal, the Arkansas Securities  
16 Commissioner may adopt rules to require continuing education of licensees  
17 under this subchapter for the purpose of enhancing the professional  
18 competence and professional responsibility of mortgage bankers, mortgage  
19 brokers, and loan officers.

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

22 (1) The content of continuing education courses;

23 (2) Accreditation of continuing education sponsors and programs;

24 (3) Accreditation of videotape or other audiovisual programs;

25 (4) Computation of credit;

26 (5) Special cases and exemptions;

27 (6) General compliance procedures; and

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

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

33  
34 23-39-508. Managing principals and branch managers.

35 (a) Each mortgage broker or mortgage banker licensed under this  
36 subchapter shall have a managing principal who operates the business under

1 that person's full charge, control, and supervision.

2 (b) Each principal office and branch office of a mortgage broker or  
3 mortgage banker licensed under this subchapter shall have a branch manager  
4 who meets the experience requirements under § 23-39-505(c)(1).

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

7 (d) Each mortgage broker or mortgage banker licensed under this  
8 subchapter shall file a form as prescribed by the Arkansas Securities  
9 Commissioner indicating the business's designation of managing principal and  
10 branch manager for each branch and each individual's acceptance of the  
11 responsibility as managing principal or branch manager.

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

16 (f)(1) Any mortgage broker or mortgage banker that does not comply  
17 with this section shall pay a fine equal to ten dollars (\$10.00) for each day  
18 that he or she fails to notify the commissioner of the violation, not to  
19 exceed six hundred dollars (\$600).

20 (2) The commissioner may revoke or suspend the license of, or  
21 may deny the renewal of, the license of any mortgage broker or mortgage  
22 banker who fails to pay any fine issued under subdivision (f)(1) of this  
23 section.

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

26  
27 23-39-509. Offices - Address changes - Location of records.

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

30 (b) In addition, each mortgage broker, mortgage banker, and mortgage  
31 servicer shall identify the location in which all of the books, records, and  
32 files pertaining to mortgage loan transactions relating to borrowers in  
33 Arkansas are maintained.

34 (c) The Arkansas Securities Commissioner may, by rule, impose terms  
35 and conditions under which the records and files shall be maintained,  
36 including whether the records must be maintained in Arkansas.

1       (d)(1) Each mortgage banker, mortgage broker, or mortgage servicer  
2 shall report any change of address of the principal place of business, any  
3 branch office, or location in which the files pertaining to mortgage loan  
4 transactions relating to borrowers in Arkansas are maintained within thirty  
5 (30) days after the change.

6       (2) Any licensee that does not comply with subdivision (d)(1) of  
7 this section shall pay a fine equal to ten dollars (\$10.00) for each day that  
8 he or she fails to notify the commissioner, up to a maximum of six hundred  
9 dollars (\$600).

10       (3) The commissioner may revoke or suspend the license of, or  
11 may deny the renewal of, the license of the mortgage broker, or mortgage  
12 banker, or mortgage servicer who fails to pay any fine issued under  
13 subdivision (d)(2) of this section.

14  
15       23-39-510. Licensee duties.

16       Each person required to be licensed under this subchapter, shall, in  
17 addition to duties imposed by other statutory or common law:

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

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

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

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

27  
28       23-39-511. Records - Escrow funds or trust accounts.

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

31       (1) The applicant's name;

32       (2) The date of application;

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

34       (4) Whether the license was granted or refused.

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

1 officers.

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

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

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

6 (C) Be open to public inspection.

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

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

15 (2) Any licensee that does not comply with subdivision (d)(1) of  
16 this section shall pay a fine equal to ten dollars (\$10.00) for each day that  
17 he or she fails to file a correcting amendment, up to a maximum of six  
18 hundred dollars (\$600).

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

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

26  
27 23-39-512. Public inspection of records - Exceptions.

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

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

35 (b) Except for reasonably segregable portions of information and  
36 records that by law would routinely be made available to a party other than

1 an agency in litigation with the commissioner, the commissioner shall not  
2 publish or make available the following information:

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

7 (2) Interagency or intra-agency memoranda or letters including  
8 generally records which reflect discussions between or consideration by the  
9 commissioner or members of his or her staff, or both, of any action taken or  
10 proposed to be taken by the commissioner or by any members of his or her  
11 staff, and specifically, reports, summaries, analyses, conclusions, or any  
12 other work product of the commissioner or of attorneys, accountants,  
13 analysts, or other members of the commissioner's staff, prepared in the  
14 course of an inspection of the books or records of any person whose affairs  
15 are regulated by the commissioner, or prepared otherwise in the course of an  
16 examination or investigation or related litigation conducted by or on behalf  
17 of the commissioner, except those which by law would routinely be made to a  
18 party other than an agency in litigation with the commissioner;

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

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

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

29 (4) Investigatory records compiled for law enforcement purposes  
30 to the extent that production of the records would interfere with enforcement  
31 proceedings, deprive a person of a right to a fair trial or an impartial  
32 adjudication, or disclose the identity of a confidential source.

33 (A) The commissioner may also withhold investigatory  
34 records that would constitute an unwarranted invasion of personal privacy,  
35 disclose investigative techniques and procedures, or endanger the life or  
36 physical safety of law enforcement personnel.

1 (B) Investigatory records under this section include:

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

8 (ii) All written communications from or to any  
9 person confidentially complaining or otherwise furnishing information  
10 respecting the possible violations, as well as all correspondence and  
11 memoranda in connection with the confidential complaints or information;

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

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

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

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

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



1 under applicable law;

2 (7) Trade secrets obtained from any person; or

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

6  
7 23-39-513. Prohibited activities.

8 In addition to the other activities that are prohibited under this  
9 subchapter, it is unlawful for any person in the course of any mortgage loan  
10 transaction or activity:

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

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

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

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

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

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

32 (7) In connection with the advertisement, solicitation, brokering,  
33 making, servicing, purchase, or sale of any mortgage loan, to engage in any  
34 transaction, practice, or course of business that is not in good faith or  
35 fair dealing, that is misleading or deceptive, or that constitutes a fraud  
36 upon any person; or

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

4       (B) Any penalty for prepayment under subdivision (8)(A) made  
5 within the thirty-six (36) month period shall not exceed the greater of:

6           (i)(a) Three percent (3%) of the principal loan amount  
7 remaining on the date of prepayment, if the prepayment is made within the  
8 first twelve (12) month period immediately following the date the loan was  
9 made;

10           (b) Two percent (2%) of the principal loan amount  
11 remaining on the date of prepayment, if the prepayment is made within the  
12 second twelve (12) month period immediately following the date the loan was  
13 made;

14           (c) One percent (1%) of the principal loan amount  
15 remaining on the date of prepayment, if the prepayment is made within the  
16 third twelve (12) month period immediately following the date the loan was  
17 made; or

18           (ii) An amount equal to interest for six (6) months  
19 calculated on eighty percent (80%) of the remaining principal balance due on  
20 the mortgage loan as of the date the prepayment is made;

21       (9)(A) To influence or attempt to influence through coercion,  
22 extortion, or bribery, the development, reporting, result, or review of a  
23 real estate appraisal sought in connection with a mortgage loan.

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

26           (i) Consider additional appropriate property information;

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

29           (iii) Correct errors in the appraisal report;

30       (10) To broker or make a refinancing of a mortgage loan where the  
31 refinancing charges additional points and fees, within a twelve (12) month  
32 period after the original loan agreement was signed, unless the refinancing  
33 results in a reasonable, tangible net benefit to the borrower considering all  
34 of the circumstances surrounding the refinancing;

35       (11) To broker or make a mortgage loan in violation of any federal law  
36 or any law of Arkansas; and

1           (12) To engage in practices that are dishonest or unethical in the  
2 mortgage industry.

3  
4           23-39-514. Disciplinary authority.

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

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

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

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

20                           (B) Has violated or failed to comply with any provision of  
21 this subchapter, rule adopted by the commissioner, or order of the  
22 commissioner.

23                           (C) Has pleaded guilty to or been found guilty of:

24                                   (i) Any felony;

25                                   (ii) Any offense involving breach of trust, moral  
26 turpitude, or fraudulent or dishonest dealing within the past ten (10) years;  
27 or

28                                   (iii) Any offense involving mortgage lending, any  
29 aspect of the mortgage industry, or any aspect of the securities industry,  
30 the insurance industry, or any other activity pertaining to financial  
31 services;

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

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

1 denying, suspending, or revoking that person's license as a mortgage broker,  
2 mortgage banker, mortgage servicer, loan officer, securities broker-dealer,  
3 securities agent, investment adviser, or investment adviser representative;

4 (F) Is the subject of an order, including any denial,  
5 suspension, or revocation of authority to engage in a regulated activity, by  
6 any other state or federal authority to which the person is, has been, or has  
7 sought to be subject, entered within the past five (5) years, including but  
8 not limited to, the mortgage industry;

9 (G) Has been found by a court of competent jurisdiction to  
10 have charged or collected any fee or rate of interest, or made or brokered  
11 any mortgage loan with terms or conditions or in a manner contrary to the  
12 Arkansas Constitution, Article 19, § 13, as amended by Amendment 60.

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

16 (I) Has been the executive officer or controlling  
17 shareholder or owned a controlling interest in any mortgage broker, mortgage  
18 banker, or mortgage servicer who has been subject to an order or injunction  
19 described in subdivisions (D) through (G) of this subsection; or

20 (J)(i) Has failed to pay the proper filing or renewal fee  
21 under this subchapter.

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

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

31 (2) The civil penalty shall not exceed ten thousand dollars  
32 (\$10,000) for each violation under subdivision (b)(1) of this section by a  
33 mortgage broker, mortgage banker, mortgage servicer, or loan officer.

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

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

4           (3) The licensee may contest the order by delivering a written  
5 request for a hearing to the commissioner within thirty (30) days from the  
6 date on which the licensee receives notice of the order.

7           (4) The commissioner shall schedule a hearing to be held within  
8 thirty (30) days after the commissioner receives a timely written request for  
9 a hearing.

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

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

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

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

23           (B) The person may contest the cease and desist order by  
24 delivering a written request for a hearing to the commissioner within thirty  
25 (30) days from the date on which the person receives notice of the order.

26           (C) The commissioner shall schedule a hearing to be held  
27 within thirty (30) days after the commissioner receives a timely written  
28 request for a hearing.

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

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

35           (3)(A) A person shall be subject to a civil penalty of up to  
36 twenty-five thousand dollars (\$25,000) for each violation of the

1 commissioner's cease and desist order committed after entry of the order, if:

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

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

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

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

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

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

23 (g) The commissioner or the commissioner's designee may:

24 (1) Administer oaths and affirmations;

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

28 (3) Require the production of any books, papers, correspondence,  
29 memoranda, agreements, or other documents or records which the commissioner  
30 deems relevant or material to the inquiry.

31 (h)(1) The commissioner may from time to time conduct examinations,  
32 with or without cause, of the books and records of any applicant or licensee  
33 in order to determine the compliance with this subchapter and any rules  
34 adopted under this subchapter.

35 (2) The applicant or licensee shall pay a fee for each  
36 examination under subdivision (h)(1) of this section, not to exceed one

1 hundred fifty dollars (\$150) per examiner for each day, or for part of a day,  
2 during which any examiners are absent from the office of the commissioner for  
3 the purpose of conducting the examination.

4 (3) In addition, the applicant or licensee shall pay the actual  
5 hotel and traveling expenses of the examiner traveling to and from the office  
6 of the commissioner while the examiner is conducting an examination under  
7 subdivision (h)(1).

8 (i) If the commissioner finds that the managing principal, branch  
9 manager, or loan officer of a licensee had knowledge of, or reasonably should  
10 have had knowledge of, or participated in, any activity that results in the  
11 entry of an order under this section suspending or withdrawing the license of  
12 a licensee, the commissioner may prohibit the managing principal, branch  
13 manager, or loan officer from serving as a managing principal, branch  
14 manager, or loan officer for any period of time the commissioner deems  
15 appropriate.

16 (j) Except for orders entered under subdivisions (c)(1) and (d)(1) of  
17 this section, before entering an order under this section, the commissioner  
18 shall provide:

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

21 (2) An opportunity for hearing; and

22 (3) Written findings of fact and conclusions of law.

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

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

34 (A) Refer the evidence which is available concerning  
35 violations of this subchapter or any rule, regulation, or order issued under  
36 this subchapter, to the appropriate prosecuting attorney or regulatory

1 agency, who may with or without the reference, institute the appropriate  
2 criminal or regulatory proceedings under this subchapter; and

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

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

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

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

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

18 (B) A declaratory judgment;

19 (C) An accounting;

20 (D) Disgorgement;

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

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

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

26  
27 23-39-515. Review of order of the commissioner.

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

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

36 (B) When a petition under subdivision (a)(1) of this



1 section has been filed, the court has exclusive jurisdiction to affirm,  
2 modify, enforce, or set aside any order of the commissioner, in whole or in  
3 part, except that a court may not set aside a summary order entered by the  
4 commissioner when the subject of the order has not requested a hearing before  
5 the commissioner as provided in § 23-39-514(c)(1) or (d)(1).

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

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

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

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

22  
23 23-39-516. Criminal penalty.

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

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

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

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

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

36 (2) Each transaction involving the unlawful making or brokering

1 of a mortgage loan is a separate offense.

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

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

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

12  
13 SECTION 2. Arkansas Code Title 23, Chapter 39, Subchapter 1 is  
14 repealed.

15 ~~23-39-101.—Title.~~

16 ~~This subchapter shall be known and may be cited as the “Mortgage Loan~~  
17 ~~Company and Loan Broker Act”.~~

18  
19 ~~23-39-102.—Definitions.~~

20 ~~As used in this subchapter, unless the context otherwise requires:~~

21 ~~(1) “Affiliate” means any person who, directly or indirectly through~~  
22 ~~one (1) or more intermediaries, controls, or is controlled by, or is under~~  
23 ~~common control with, another person;~~

24 ~~(2) “Commissioner” means the Securities Commissioner;~~

25 ~~(3)(A) “Loan broker” means any person who engages in the business of~~  
26 ~~purchasing wages or salaries or who acts as a go-between, finder, or agent of~~  
27 ~~a lender or borrower of money for the purpose of procuring a loan of money or~~  
28 ~~who engages in the business of guaranteeing or endorsing notes and other~~  
29 ~~evidences of indebtedness.~~

30 ~~(B) Any reference to, requirement for, or provision relating to~~  
31 ~~mortgage loan company in this chapter shall also apply to a loan broker.~~

32 ~~(C) The application and registration for a mortgage loan company~~  
33 ~~and loan broker shall be the same;~~

34 ~~(4) “Mortgage loan” means any loan secured by a mortgage on real~~  
35 ~~property;~~

36 ~~(5)(A) “Mortgage loan company” means any person who directly or~~

1 indirectly;

2                   (i) ~~Holds himself out for hire to serve as an agent for~~  
3 ~~any person in an attempt to obtain a loan which will be secured by a lien or~~  
4 ~~mortgage on real property;~~

5                   (ii) ~~Holds himself out for hire to serve as an agent for~~  
6 ~~any person who has money to loan, which loan is or will be secured by a lien~~  
7 ~~or mortgage on real property;~~

8                   (iii) ~~Holds himself out as being able to make, purchase,~~  
9 ~~place, sell, or exchange loans secured by liens or mortgages on real~~  
10 ~~property;~~

11                   (iv) ~~Holds himself out as being able to service loans~~  
12 ~~secured by liens or mortgages on real property; or~~

13                   (v) ~~Holds himself out to be a loan broker.~~

14                   (B) ~~“Mortgage loan company” shall not mean any person who~~  
15 ~~obtains, makes, purchases, places, sells, exchanges, or services, in the~~  
16 ~~aggregate, fewer than six (6) loans secured by liens or mortgages on real~~  
17 ~~property within any ten-year period; and~~

18                   (6) ~~“Person” means an individual, a corporation, a partnership, an~~  
19 ~~association, a joint stock company, a trust where the interests of the~~  
20 ~~beneficiaries are evidenced by a security, an unincorporated organization, a~~  
21 ~~government, or a political subdivision of a government.~~

22  
23                   ~~23-39-103. Penalties.~~

24                   (a) ~~Any person who willfully violates any provision of this chapter,~~  
25 ~~except § 23-39-104 or who willfully violates § 23-39-104 knowing the~~  
26 ~~statement to be false or misleading in any material respect, shall be guilty~~  
27 ~~of a Class B felony as that term is defined in § 5-1-101 et seq.~~

28                   (b) ~~Any person who willfully violates any rule or order of the~~  
29 ~~Securities Commissioner, authorized under this chapter, shall be guilty of a~~  
30 ~~Class B misdemeanor as that term is defined in § 5-1-101 et seq., but no~~  
31 ~~person may be imprisoned for violation of any rule or order of which that~~  
32 ~~person did not have actual knowledge.~~

33                   (c) ~~The commissioner may refer such evidence as is available~~  
34 ~~concerning violations of this chapter or of any rule or order hereunder to~~  
35 ~~the appropriate prosecuting attorney, who may, with or without such a~~  
36 ~~reference, institute the appropriate criminal proceedings under this chapter.~~

1       ~~(d) Nothing in this chapter limits the power of the state to punish~~  
2 ~~any person for any conduct which constitutes a crime in statute or at common~~  
3 ~~law.~~

4  
5       ~~23-39-104. False statements.~~

6       ~~It is unlawful for any person to make or cause to be made, in any~~  
7 ~~document filed with the Securities Commissioner or in any proceeding under~~  
8 ~~this chapter, any statement which is, at the time and in the light of the~~  
9 ~~circumstances under which it is made, false or misleading in any material~~  
10 ~~respect.~~

11  
12       ~~23-39-105. Fraud.~~

13       ~~It is unlawful for any mortgage loan company, in connection with the~~  
14 ~~operation, management, or servicing of mortgage contracts, directly or~~  
15 ~~indirectly to:~~

16       ~~(1) Employ any device, scheme, or artifice to defraud; or~~

17       ~~(2) Engage in any act, practice, or course of business which operates~~  
18 ~~or would operate as a fraud or deceit upon any person.~~

19  
20       SECTION 3. Arkansas Code Title 23, Chapter 39, Subchapter 2, is  
21 repealed.

22       ~~23-39-201. Commissioner's powers and duties generally.~~

23       ~~The Securities Commissioner shall exercise general supervision and~~  
24 ~~control over mortgage loan companies and loan brokers doing business in the~~  
25 ~~State of Arkansas. In addition to the other duties imposed upon him by law,~~  
26 ~~the powers and duties of the commissioner are to:~~

27       ~~(1) Make reasonable rules and regulations which may be necessary for~~  
28 ~~making this chapter effective;~~

29       ~~(2) Conduct investigations which may be necessary to determine whether~~  
30 ~~any person has engaged or is about to engage in any act or practice~~  
31 ~~constituting a violation of any provision of this chapter;~~

32       ~~(3) Conduct any examinations, investigations, and hearings, in~~  
33 ~~addition to those specifically provided for by law, which may be necessary~~  
34 ~~and proper for the efficient administration of the mortgage loan company laws~~  
35 ~~of this state; and~~

36       ~~(4) Classify as confidential certain records and information obtained~~

1 by the department when such matters are obtained from a governmental agency  
2 upon the express condition that they shall remain confidential, or by  
3 investigation or examination by the department's staff; however, applications  
4 for registration or renewal, including financial statements contained  
5 therein, shall be public documents.

6  
7 ~~23-39-202. Investigations by commissioner—Injunctions.~~

8 ~~(a) The Securities Commissioner may investigate, either upon complaint~~  
9 ~~or otherwise, when it appears that a mortgage loan company is conducting its~~  
10 ~~business in an unsafe and injurious manner or in violation of this chapter,~~  
11 ~~or the regulations promulgated thereunder by the commissioner, or when it~~  
12 ~~appears that any person is engaging in the mortgage loan company business~~  
13 ~~without being registered under the provisions of this chapter.~~

14 ~~(b)(1) Whenever it appears, upon sufficient grounds or evidence~~  
15 ~~satisfactory to the commissioner, that any mortgage loan company has engaged~~  
16 ~~in or is about to engage in any act or practice in violation of this chapter~~  
17 ~~or any rule or regulation or order hereunder, or the assets or capital of any~~  
18 ~~mortgage loan company is impaired or the mortgage loan company's affairs are~~  
19 ~~in an unsafe condition, the commissioner may:~~

20 ~~(A) Refer the evidence which is available concerning~~  
21 ~~violations of this chapter or any rule, regulation, or order hereunder, to~~  
22 ~~the appropriate prosecuting attorney, who may, with or without such~~  
23 ~~reference, institute the appropriate criminal proceedings under this chapter;~~  
24 ~~and~~

25 ~~(B) Summarily order the mortgage loan company to cease and~~  
26 ~~desist from the act or practice, during which time the commissioner may apply~~  
27 ~~to the Chancery Court of Pulaski County to enjoin the act or practice and to~~  
28 ~~enforce compliance with this chapter or any rule, regulation, or order~~  
29 ~~hereunder. However, the commissioner may, without issuing a cease and desist~~  
30 ~~order, apply directly to the Chancery Court of Pulaski County for injunctive~~  
31 ~~relief.~~

32 ~~(2) Upon proper showing, a permanent or temporary injunction,~~  
33 ~~restraining order, or writ of mandamus shall be granted, and a receiver or~~  
34 ~~conservator may be appointed for defendant or defendant's assets.~~

35 ~~(3) The court may not require the commissioner to post a bond.~~

36

1           ~~23-39-203. Commissioner's investigatory powers.~~

2           ~~(a) In the conduct of any examination, investigation, or hearing, the~~  
3 ~~Securities Commissioner may:~~

4                 ~~(1) Compel the attendance of any person or obtain any documents~~  
5 ~~by subpoena;~~

6                 ~~(2) Administer oaths; and~~

7                 ~~(3) Examine any person under oath concerning the business and~~  
8 ~~conduct of affairs of any person subject to the provisions of this chapter~~  
9 ~~and, in connection therewith, require the production of any books, records,~~  
10 ~~or papers relevant to the inquiry.~~

11           ~~(b) In case of contumacy by, or refusal to obey a subpoena issued to,~~  
12 ~~any person, the Chancery Court of Pulaski County, upon application by the~~  
13 ~~commissioner, may issue to the person an order requiring him to appear before~~  
14 ~~the commissioner, or the officer designated by him, there to produce~~  
15 ~~documentary evidence, if so ordered, or to give evidence touching the matter~~  
16 ~~under investigation or in question. Failure to obey the order of the court~~  
17 ~~may be punished by the court as a contempt of court.~~

18           ~~(c) The cost of any examination, investigation, or hearing conducted~~  
19 ~~under this chapter may be assessed to and collected from the mortgage loan~~  
20 ~~company in question by the commissioner.~~

21  
22           ~~23-39-204. Records, reports, and examinations.~~

23           ~~(a) Every mortgage loan company shall make and keep any accounts,~~  
24 ~~correspondence, memoranda, papers, books, data, and other records which the~~  
25 ~~Securities Commissioner by rule prescribes. All records so required shall be~~  
26 ~~preserved for five (5) years unless the commissioner by rule prescribes~~  
27 ~~otherwise for particular types of records.~~

28           ~~(b) Every mortgage loan company shall file such financial reports as~~  
29 ~~the commissioner by rule prescribes. If the information contained in any~~  
30 ~~document filed with the commissioner is or becomes inaccurate or incomplete~~  
31 ~~in any material respect, the registrant shall promptly file a correcting~~  
32 ~~amendment.~~

33           ~~(c)(1) All the records required to be maintained by this chapter are~~  
34 ~~subject at any time or from time to time to such periodic, special, or other~~  
35 ~~examinations by representatives of the commissioner, within or without this~~  
36 ~~state, as the commissioner deems necessary or appropriate in the public~~

1 ~~interest or for the protection of investors.~~

2 ~~(2) A mortgage loan company shall pay a fee for each examination~~  
3 ~~not to exceed one hundred dollars (\$100) per day, or fraction thereof, that~~  
4 ~~any and all examiners are absent from the office of the commissioner for the~~  
5 ~~purpose of making the examination. In addition thereto, the company shall pay~~  
6 ~~the actual travel, lodging, and meal expenses of the authorized examiners to~~  
7 ~~and from Little Rock.~~

8 ~~(3) For the purpose of avoiding unnecessary duplication of~~  
9 ~~examinations, the commissioner, insofar as he deems it practicable in~~  
10 ~~administering this subsection, may cooperate with any agency of the state or~~  
11 ~~federal government, other states, or the Federal National Mortgage~~  
12 ~~Association and may accept their examinations in whole or in part in lieu of~~  
13 ~~an examination by the commissioner.~~

14 ~~(d) Except as otherwise provided by law, applications for registration~~  
15 ~~or renewals, all papers, documents, reports, and other written instruments~~  
16 ~~filed with the commissioner, under this chapter, are open to public~~  
17 ~~inspection. However, the commissioner may withhold from public inspection,~~  
18 ~~for such time as he considers necessary, any information which, in his~~  
19 ~~judgment, the public welfare or the welfare of any mortgage loan company~~  
20 ~~requires to be so withheld. All investigations and evidence contained therein~~  
21 ~~shall be nonpublic until such time as the commissioner makes all or part of~~  
22 ~~the investigation public.~~

23  
24 ~~23-39-205. Filing and destruction of documents.~~

25 ~~(a) A document is filed when it is received by the Securities~~  
26 ~~Commissioner.~~

27 ~~(b) The commissioner may permit the destruction of any document filed~~  
28 ~~with the State Securities Department or the commissioner after:~~

29 ~~(1) Six (6) years from the date of filing of the documents; or~~

30 ~~(2) The reproduction of the documents by photograph or~~  
31 ~~microphotograph of a permanent nature.~~

32  
33 ~~23-39-206. Review of order of commissioner.~~

34 ~~(a)(1) Any person aggrieved by a final order of the Securities~~  
35 ~~Commissioner may obtain a review of the order in any state court of competent~~  
36 ~~jurisdiction by filing in court, within sixty (60) days after the entry of~~

1 ~~the order, a written petition praying that the order be modified or set aside~~  
2 ~~in whole or in part.~~

3 ~~(2) A copy of the petition shall be forthwith served upon the~~  
4 ~~commissioner, and thereupon the commissioner shall certify and file in court~~  
5 ~~a copy of the filing and evidence upon which the order was entered. When~~  
6 ~~these have been filed, the court has exclusive jurisdiction to affirm,~~  
7 ~~modify, enforce, or set aside the order, in whole or in part.~~

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

10 ~~(2) If either party applies to the court for leave to adduce~~  
11 ~~additional material evidence and shows to the satisfaction of the court that~~  
12 ~~there were reasonable grounds for failure to adduce the evidence in the~~  
13 ~~hearing before the commissioner, the court may order the additional evidence~~  
14 ~~to be taken before the commissioner and to be adduced upon the hearing in~~  
15 ~~such manner and upon such conditions as the court considers proper.~~

16 ~~(3) The commissioner may modify his findings and order by reason~~  
17 ~~of the additional evidence and shall file in the court the additional~~  
18 ~~evidence together with any modified or new findings or order.~~

19 ~~(c) The judgment of the court is final, subject to review by the~~  
20 ~~Arkansas Supreme Court.~~

21 ~~(d) The commencement of proceedings under subsection (a) of this~~  
22 ~~section does not, unless specifically ordered by the court, operate as a stay~~  
23 ~~of the commissioner's order.~~

24  
25 SECTION 4. Arkansas Code Title 23, Chapter 39, Subchapter 3, is  
26 repealed.

27 ~~23-39-301. Registration required.~~

28 ~~It is unlawful for any person to transact business in Arkansas, either~~  
29 ~~directly or indirectly, as a mortgage loan company or loan broker without~~  
30 ~~first filing an application with the Securities Commissioner and obtaining a~~  
31 ~~registration certificate under this chapter.~~

32  
33 ~~23-39-302. Application for registration or renewal.~~

34 ~~Each verified application for registration or renewal shall be filed in~~  
35 ~~writing with the Securities Commissioner and contain the following:~~

36 ~~(1) The name of the applicant and each of the applicant's affiliates~~



1 and the name under which the applicant will conduct business in Arkansas,  
2 together with the articles of incorporation, articles of partnership, or any  
3 other appropriate document;

4 (2) The location of the applicant's principal office and each branch  
5 office in this state;

6 (3) The name, residence address, and business address of each person  
7 having an interest in the business as principals, partners, officers,  
8 trustees, directors, and managers, specifying the capacity and title of each;

9 (4) The general plan and character of the business;

10 (5) Audited financial statements of the applicant prepared by an  
11 independent certified public accountant accompanied by an opinion acceptable  
12 to the commissioner as of a date not more than twelve (12) months preceding  
13 the application date;

14 (6) The length of time the applicant has been engaged in business;

15 (7) Disclosure of any action or proceeding, civil or criminal,  
16 judicial or administrative, completed or in progress against the applicant;

17 (8) The registration fee; and

18 (9) Any other information which the commissioner may by rule or order  
19 require.

20  
21 ~~23 39 303. Registration fees—Duration of registration.~~

22 ~~(a) At the time of application, applicants shall pay to the Securities~~  
23 ~~Commissioner two hundred fifty dollars (\$250) for initial registration and~~  
24 ~~one hundred fifty dollars (\$150) for each renewal registration.~~

25 ~~(b)(1) The initial registration period shall not exceed twelve (12)~~  
26 ~~months and shall expire on the last day of the third month after the~~  
27 ~~applicant's fiscal year end or after the date of audited financial statements~~  
28 ~~if that date differs from the fiscal year end.~~

29 ~~(2) Each renewal registration period shall be for twelve (12)~~  
30 ~~months unless otherwise permitted by the commissioner.~~

31  
32 ~~23 39 304. Surety bond or cash deposit.~~

33 ~~(a)(1) Upon application for initial registration or renewal of~~  
34 ~~registration, each mortgage loan company shall deposit with the Securities~~  
35 ~~Commissioner a corporate surety bond in the amount of thirty five thousand~~  
36 ~~dollars (\$35,000).~~

1           ~~(2) Any appropriate deposit of cash or securities issued by the~~  
2 ~~federal government, the State of Arkansas, or any political subdivision~~  
3 ~~thereof shall be accepted in lieu of any corporate surety bond required.~~

4           ~~(3) Deposits of cash or securities shall not be withdrawn until~~  
5 ~~five (5) years after the last effective date of the registration.~~

6           ~~(b)(1) Every bond shall provide for suit thereon by any person who has~~  
7 ~~a cause of action under this chapter.~~

8           ~~(2) In no event shall the total liability of the surety, to all~~  
9 ~~persons, cumulative or otherwise, exceed the amount specified in the bond.~~

10          ~~(3) Every bond shall provide that no suit shall be maintained to~~  
11 ~~enforce any liability on the bond unless brought within five (5) years after~~  
12 ~~the act upon which it is based.~~

13          ~~(4) The bond of the mortgage loan company shall be in~~  
14 ~~substantially the form as the commissioner by rule prescribes.~~

15  
16          ~~23-39-305. Net worth requirement.~~

17          ~~Each mortgage loan company shall have net worth of not less than~~  
18 ~~twenty five thousand dollars (\$25,000). "Net worth" shall mean the difference~~  
19 ~~between the mortgage loan company's total assets and total liabilities as~~  
20 ~~reflected in a balance sheet prepared in accordance with generally accepted~~  
21 ~~accounting principles.~~

22  
23          ~~23-39-306. Exemptions from registration, bond, and net worth~~  
24 ~~requirements.~~

25          ~~(a) Unless indicated otherwise, the following shall be exempt from~~  
26 ~~registration, bond, and net worth requirements under this chapter:~~

27           ~~(1) Any trust company or industrial loan company chartered under~~  
28 ~~the laws of this state, insurance company licensed or authorized to conduct~~  
29 ~~business with the State Insurance Department, small business investment~~  
30 ~~corporation licensed pursuant to the Small Business Investment Act of 1958,~~  
31 ~~real estate investment trust as defined in 26 U.S.C. § 856, or any state or~~  
32 ~~federally chartered bank, savings bank, savings and loan association, or~~  
33 ~~credit union whose accounts are insured by the Federal Deposit Insurance~~  
34 ~~Corporation or the National Credit Union Administration, or any direct,~~  
35 ~~wholly owned subsidiary of one (1) of these organizations;~~

36           ~~(2) An attorney at law rendering services in the performance of~~

1 ~~his duties as an attorney at law;~~

2 ~~(3)(A) An Arkansas licensed real estate broker rendering~~  
3 ~~services in the performance of his duties as a real estate broker who obtains~~  
4 ~~financing for a real estate transaction if:~~

5 ~~(i) The real estate broker does not act as a loan~~  
6 ~~broker in more than five (5) transactions during any twelve month period;~~

7 ~~(ii) He does not receive a fee for his activities as~~  
8 ~~a loan broker until after financing is actually obtained; and~~

9 ~~(iii) He files with the Securities Commissioner,~~  
10 ~~within thirty (30) days of each transaction, a disclosure statement~~  
11 ~~describing the transaction, which statement shall contain any information~~  
12 ~~which the commissioner by rule or order may require.~~

13 ~~(B) An Arkansas licensed real estate broker rendering~~  
14 ~~services in the performance of his duties as a real estate broker who acts as~~  
15 ~~a loan broker and who receives a fee for obtaining financing in six (6) or~~  
16 ~~more real estate transactions in any twelve month period must register under~~  
17 ~~this subchapter but is exempt from the net worth requirements herein;~~

18 ~~(4)(A) Any mortgage loan company which is subject to licensing,~~  
19 ~~supervision, or auditing by the Federal National Mortgage Association~~  
20 ~~("Fannie Mae"), the Government National Mortgage Association ("Ginnie Mae"),~~  
21 ~~or the United States Department of Housing and Urban Development (HUD) as an~~  
22 ~~approved seller or servicer shall be exempt from the registration~~  
23 ~~requirements of this chapter. However, upon the initial or renewal filing of~~  
24 ~~the proof of exemption required by subsection (b) of this section, each such~~  
25 ~~mortgage loan company shall submit annual audited financial statements of its~~  
26 ~~books and records which reflect it has a net worth of at least twenty five~~  
27 ~~thousand dollars (\$25,000) accompanied by an opinion acceptable to the~~  
28 ~~commissioner, and deposit the corporate surety bond, cash, or securities in~~  
29 ~~accordance with § 23-39-304 of this chapter. The audited financial statements~~  
30 ~~shall be filed with the commissioner within ninety (90) days of the close of~~  
31 ~~its fiscal year, and the most current audited financial statements which are~~  
32 ~~no more than twelve (12) months old shall be filed with the initial filing.~~

33 ~~(B) Any mortgage loan company which was approved to~~  
34 ~~participate in the United States Department of Veterans Affairs Loan Guaranty~~  
35 ~~Program on or before July 1, 1997, shall be exempt from the registration,~~  
36 ~~bond, and net worth requirements of this chapter so long as that mortgage~~

1 ~~loan company remains so approved to participate and is otherwise in~~  
2 ~~compliance with the provisions of this chapter;~~

3 ~~(5) Any person doing any act under order of any court;~~

4 ~~(6) Only one (1) natural person, or husband or wife, who~~  
5 ~~provides funds for investment in loans secured by a lien on real property, on~~  
6 ~~his own account, who does not charge a fee or cause a fee to be paid for any~~  
7 ~~service other than the normal and scheduled rates for escrow, title~~  
8 ~~insurance, and recording services and who does not collect funds to be used~~  
9 ~~for the payment of any taxes or insurance premiums on the property securing~~  
10 ~~the loans;~~

11 ~~(7) Any person doing business under the laws of this state or~~  
12 ~~the United States relating to any broker-dealer, agent, or investment advisor~~  
13 ~~duly registered with the State Securities Department;~~

14 ~~(8) The United States, the State of Arkansas or any other state,~~  
15 ~~any Arkansas city, county, or other political subdivision, and any agency,~~  
16 ~~division, or corporate instrumentality of any of the foregoing;~~

17 ~~(9) Any person, or wholly owned subsidiary thereof, who makes~~  
18 ~~sales of real property which that person owns and who makes purchase money~~  
19 ~~loans to the purchasers of the real property, which loans are secured by a~~  
20 ~~lien or mortgage on that real property, provided that no funds for the~~  
21 ~~payment of insurance and taxes on the real property are held by the maker of~~  
22 ~~the liens or mortgages and that the maker of the liens or mortgages does not~~  
23 ~~sell the liens or mortgages in the secondary market other than to affiliated~~  
24 ~~or subsidiary persons;~~

25 ~~(10) Any agricultural loan organization which is subject to~~  
26 ~~licensing, supervision, or auditing of the United States Agricultural~~  
27 ~~Stabilization and Conservation Service, Commodity Credit Corporation, Farmers~~  
28 ~~Home Administration, Farm Credit Administration, or the United States~~  
29 ~~Department of Agriculture; and~~

30 ~~(11) Any loan broker who does not receive a fee or other~~  
31 ~~consideration other than from the lender after financing is actually~~  
32 ~~obtained, if the lender is registered or exempted from registration pursuant~~  
33 ~~to the provisions of this subchapter.~~

34 ~~(b)(1) Any person doing business in the state under the exemption set~~  
35 ~~forth in subdivision (a)(4) of this section shall file proof of the exemption~~  
36 ~~in such form as the commissioner may prescribe, together with a filing fee of~~

1 ~~one hundred dollars (\$100).~~

2 ~~(2) The filing fee for each annual audited financial statement~~  
3 ~~which is filed pursuant to subdivision (a)(4) of this section shall be fifty~~  
4 ~~dollars (\$50.00).~~

5  
6 ~~23-39-307. Rejection, suspension, or revocation of registration or~~  
7 ~~exemption.~~

8 ~~(a) The Securities Commissioner may reject, suspend, or revoke any~~  
9 ~~registration when the applicant or registrant:~~

10 ~~(1) Does not meet the net worth requirement of § 23-39-305;~~

11 ~~(2) Is unfit, through lack of financial responsibility,~~  
12 ~~experience, or otherwise, to conduct the business of a mortgage loan company~~  
13 ~~or loan broker, as the case may be;~~

14 ~~(3) Does not conduct his business in accordance with law or has~~  
15 ~~violated any provision of this chapter;~~

16 ~~(4) Collects interest at a usurious rate;~~

17 ~~(5) Is in such financial condition that he cannot continue in~~  
18 ~~business with safety to his customers;~~

19 ~~(6) Has been guilty of fraud in connection with any transaction~~  
20 ~~governed by this chapter;~~

21 ~~(7) Has made any misrepresentations or false statements to, or~~  
22 ~~concealed any essential or material fact from, any person in the course of~~  
23 ~~the mortgage loan company business;~~

24 ~~(8) Has knowingly made or caused to be made to the commissioner~~  
25 ~~any false representation of material fact, or has suppressed or withheld from~~  
26 ~~the commissioner any information which the applicant or registrant possesses~~  
27 ~~and which, if submitted by him, would have rendered the applicant or~~  
28 ~~registrant ineligible to be registered under this chapter;~~

29 ~~(9) Has failed to account to persons interested for all funds~~  
30 ~~received for the escrow account;~~

31 ~~(10) Has refused to permit an examination by the commissioner of~~  
32 ~~his books and affairs or has refused or failed, within a reasonable time, to~~  
33 ~~furnish any information or make any report that may be required by the~~  
34 ~~commissioner under the provisions of this chapter; or~~

35 ~~(11) Has been convicted of a felony or any misdemeanor of which~~  
36 ~~fraud is an essential element.~~

1           ~~(b) The commissioner may reject or revoke any exemption under this~~  
2 ~~subchapter when the applicant or person has failed to comply with the~~  
3 ~~provisions of § 23-39-306(a)(4), or for any of the grounds set forth in~~  
4 ~~subdivisions (a)(2) — (a)(11) of this section.~~

5  
6           ~~23-39-308. Notice of order of suspension — Hearing.~~

7           ~~(a) Notice of the entry of any order of suspension, or of refusing a~~  
8 ~~registration to any mortgage loan company, shall be given in writing, served~~  
9 ~~personally, or sent by certified mail or by telegraph to the company~~  
10 ~~affected.~~

11           ~~(b) The company, upon application, is entitled to a hearing, but if no~~  
12 ~~application for a hearing is made within twenty (20) days after the entry of~~  
13 ~~an order of suspension or of refusing a registration of any company, the~~  
14 ~~Securities Commissioner shall enter a final order in either case.~~

15  
16           ~~23-39-309. Escrow accounts.~~

17           ~~(a)(1) All moneys paid to the mortgage loan company for payment of~~  
18 ~~taxes, loan commitment deposits, work completion deposits, appraisals, credit~~  
19 ~~reports, or insurance premiums on property which secure any loan made or~~  
20 ~~serviced by the mortgage loan company shall be deposited in an account which~~  
21 ~~is insured by the Federal Deposit Insurance Corporation or the National~~  
22 ~~Credit Union Administration and shall be kept separate, distinct, and apart~~  
23 ~~from funds belonging to the mortgage loan company.~~

24           ~~(2) The funds, when deposited, are to be designated as an~~  
25 ~~“escrow account”, or under some other appropriate name, indicating that the~~  
26 ~~funds are not the funds of the mortgage loan company.~~

27           ~~(b) The mortgage loan company shall, upon reasonable notice, account~~  
28 ~~to any debtor whose property secures a loan made by the mortgage loan company~~  
29 ~~for any funds which that person has paid to the mortgage loan company for the~~  
30 ~~payment of taxes or insurance premiums on the property in question.~~

31           ~~(c) The mortgage loan company shall, upon reasonable notice, account~~  
32 ~~to the Securities Commissioner for all funds in the company’s escrow account.~~

33           ~~(d) Escrow account funds are not subject to execution or attachment on~~  
34 ~~any claim against the mortgage loan company.~~

35           ~~(e) It is unlawful for any mortgage loan company knowingly to keep or~~  
36 ~~cause to be kept any funds or money in any bank under the heading of “escrow~~

1 ~~account” or any other name designating the funds or moneys belonging to the~~  
2 ~~debtors of the mortgage loan company, except actual funds paid to the~~  
3 ~~mortgage loan company for the payment of taxes and insurance premiums on~~  
4 ~~property securing loans made or serviced by the company.~~

5  
6 SECTION 5. This act shall become effective on January 1, 2004.

7  
8 */s/ Hutchinson*

9  
10  
11 *APPROVED: 3/20/2003*  
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