

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.  
Act 1679 of the Regular Session

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

HOUSE BILL 2658

4  
5 By: Representative J. Hutchinson  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT;  
10 AND FOR OTHER PURPOSES.  
11

### Subtitle

12  
13 TO AMEND THE FAIR MORTGAGE LENDING ACT.  
14  
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
17

18 SECTION 1. Arkansas Code §§ 23-39-502 – 23-39-509 are amended to read  
19 as follows:

20 23-39-502. Definitions.

21 For purposes of this subchapter:

22 (1) "Branch manager" means the individual ~~whose principal office~~  
23 ~~is physically located in,~~ who is in charge of, ~~and who is responsible for the~~  
24 business operations of ~~a branch office~~ one (1) or more branch offices of a  
25 mortgage broker, ~~or mortgage banker,~~ or mortgage servicer;

26 (2) "Branch office" means ~~an office of a licensee~~ a location  
27 that is separate and distinct from the licensee's principal ~~office,~~ place of  
28 business:

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

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



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

6                   (3) "Commissioner" means the Securities Commissioner and  
 7 includes the commissioner's designees;

8                   (4) "Control" means the power to vote more than twenty percent  
 9 (20%) of outstanding voting shares or other interests of a corporation,  
 10 partnership, limited liability company, limited partnership, association, or  
 11 trust;

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

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

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

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

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

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

31                   (iv) An insurance company licensed or authorized to  
 32 conduct business ~~with~~ by the State Insurance Department;

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

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

1 (vii) A state or federally chartered bank, savings  
2 bank, savings and loan association, or credit union, the accounts of which  
3 are insured by the Federal Deposit Insurance Corporation or the National  
4 Credit Union Administration ~~or a direct, wholly owned subsidiary of these~~  
5 ~~organizations whose accounts are insured by the Federal Deposit Insurance~~  
6 ~~Corporation or the National Credit Union Administration~~ or any of their  
7 operating subsidiaries;

8 (viii) An agricultural loan organization that is  
9 subject to licensing, supervision, or auditing by the United States  
10 Agricultural Stabilization and Conservation Service, Commodity Credit  
11 Corporation, Farmers Home Administration, Farm Credit Administration, or the  
12 United States Department of Agriculture;

13 (ix) A nonprofit corporation that:

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

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

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

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

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

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

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

33 (b) The maker of the liens or mortgages does  
34 not sell the liens or mortgages in the secondary market other than to  
35 affiliated or subsidiary persons;

36 (xii) An individual or husband and wife who provide

1 funds for investment in loans secured by a lien on real property on his or  
 2 her or their own account and who do not:

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

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

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

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

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

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

21 (xvii) A person who brokers, makes, or services  
 22 mortgage loans if the only mortgage loans that the person brokers, makes, or  
 23 services in Arkansas are nonresidential mortgage loans;

24 ~~(xvii)~~ (xviii) An officer or employee of an exempt  
 25 person described in subdivisions (6)(B)(ii)-(xvi) of this section if acting  
 26 in the scope of employment for the exempt person; and

27 ~~(xviii)~~ (xix) Other persons as the commissioner may  
 28 by rule or order designate;

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

31 (8) "Loan officer" means an individual other than an exempt  
 32 person described in subdivision (6) of this section who in exchange for  
 33 compensation as an employee of a mortgage broker or a mortgage banker  
 34 licensed under this subchapter; ~~solicits, accepts, or offers to accept~~  
 35 ~~applications for mortgage loans;~~

36 (A) Solicits or offers to solicit an application for a

1 mortgage loan;

2 (B) Accepts or offers to accept an application for a  
3 mortgage loan;

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

6 (D) Issues or offers to issue a mortgage loan commitment  
7 or interest rate guarantee agreement;

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

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

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

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

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

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

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

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

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

32 (14) "Mortgage servicer" means a person who ~~under a contract~~  
33 ~~with a mortgage banker~~ receives from or on behalf of a borrower:

34 (A) Funds or credits ~~from or on behalf of a borrower~~ in  
35 payment for a mortgage loan; or

36 (B) The taxes or insurance associated with a mortgage

1 loan;

2 (15) "Nonresidential mortgage loan" means a loan secured by an  
 3 interest in real property used or to be used for other than one-to-four-  
 4 family residential purposes;

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

13 ~~(15)~~(17) "Person" means an individual, partnership, limited  
 14 liability company, limited partnership, corporation, association, or other  
 15 group engaged in joint business activities, however organized; and

16 ~~(16)~~(18) "Principal place of business" means a stationary  
 17 construction consisting of at least one (1) enclosed room or building in  
 18 which negotiations of mortgage loan transactions of others may be conducted  
 19 in 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 Securities Commissioner under this  
 27 subchapter.

28 (2) Each mortgage banker and mortgage servicer that was exempt  
 29 from the licensing requirements of §§ 23-39-101 - 23-39-309 [repealed] or  
 30 held a valid license under §§ 23-39-101 - 23-39-309 [repealed] as of December  
 31 31, 2003, shall have one hundred twenty (120) days from the end of its fiscal  
 32 year 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 or relationship with a mortgage broker or mortgage banker  
 10 licensed under this 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)(A) Any licensee that does not comply with this section shall  
 17 pay a ~~fine~~ late fee equal to ten dollars (\$10.00) for each day that he or she  
 18 fails to notify the commissioner as provided in subdivision (d)(2) of this  
 19 section, not to exceed six hundred dollars (\$600).

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

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

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

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

32  
 33 23-39-504. Rulemaking authority.

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

- 36 (1) Carry out the provisions of this subchapter;

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

2 (3) Instruct mortgage ~~lenders or brokers,~~ mortgage bankers,  
 3 mortgage servicers, and loan officers in interpreting this subchapter.

4

5 23-39-505. Qualifications for licensure - Issuance.

6 (a)(1) Any person ~~other than an exempt person~~ desiring to obtain a  
 7 license as a loan officer, mortgage banker, mortgage broker, or mortgage  
 8 servicer shall make written application for licensure to the Securities  
 9 Commissioner in the form prescribed by the commissioner.

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

12 (3) In addition to any other information required under this  
 13 subchapter ~~and in accordance with~~ or any rules adopted by the commissioner,  
 14 the application shall contain any information the commissioner deems  
 15 necessary and shall include the following:

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

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

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

22 (D)(i) The qualifications and business history of the  
 23 applicant and any partner, officer, or director, any person occupying a  
 24 similar status or performing similar functions, or any person directly or  
 25 indirectly controlling the applicant.

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

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

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

36 (c) Any felony convictions; and



1 (E) With respect to:

2 (i) An application for licensing as a mortgage  
 3 banker, mortgage broker, or mortgage servicer, the applicant's financial  
 4 condition and business history; and

5 (ii) The application for licensing as a loan  
 6 officer, the applicant's business history.

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

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

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

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

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

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

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

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

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

33 (e) Each applicant for initial licensure shall pay a filing fee of  
 34 seven hundred fifty dollars (\$750) for licensure as a mortgage broker,  
 35 mortgage banker, or mortgage servicer or fifty dollars (\$50.00) for licensure  
 36 as a loan officer.

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

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

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

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

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

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

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

27 (1) Prepared by an independent certified public accountant;

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

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

32 (4) Dated within twelve (12) months preceding the date on which  
 33 the application is filed.

34 (h) Any general partner, manager of a limited liability company, or  
 35 officer of a corporation who individually meets the requirements under  
 36 subsection (b) of this section shall be deemed to have met the qualifications

1 for licensure as a loan officer ~~upon payment of the applicable fee upon~~  
 2 filing a written application with the commissioner in the form prescribed by  
 3 the commissioner and payment of the applicable fee.

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

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

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

13 (j) Except as set forth in § 23-39-503(d), each license issued by the  
 14 commissioner under this subchapter shall expire at the close of business on  
 15 the following dates unless previously surrendered by the licensee and the  
 16 surrender is accepted by the commissioner, it is abandoned by the licensee as  
 17 provided in § 23-39-506, or it is suspended or revoked by the commissioner:

18 (1) One hundred eighty (180) days after the end of the  
 19 licensee's current fiscal year in the case of a mortgage broker, mortgage  
 20 banker, or mortgage servicer; and

21 (2) On the last day of the twelfth month after the date of  
 22 issuance in the case of a loan officer.

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

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

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

28 (A) Pay the commissioner a fee of one hundred dollars  
 29 (\$100);

30 (B) Submit to the commissioner the information required  
 31 under subdivision (a)(3)(D) of this section and any other information deemed  
 32 relevant by the commissioner; and

33 (C) Certify that the licensee shall continue to meet the  
 34 qualifications under this section.

35 (3) The commissioner may refuse to give written consent if he or  
 36 she finds that any of the grounds for denial, revocation, or suspension of a

1 license under § 23-39-514 are applicable to the person seeking to acquire  
 2 control of a license.

3  
 4 23-39-506. License renewal - Termination.

5 (a)~~(1)~~ Each licensed mortgage broker, mortgage banker, and mortgage  
 6 servicer wishing to renew a license shall:

7 (1) File a renewal application with the Securities Commissioner  
 8 in the form prescribed by the commissioner within one hundred twenty (120)  
 9 days after the end of the licensee's fiscal year;

10 ~~(2) Each person under subdivision (a)(1) of this section may~~  
 11 ~~renew its license by:~~

12 ~~(A) Filing a renewal application on the form prescribed by~~  
 13 ~~the commissioner;~~

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

19 (2)(A) Submit with the renewal application audited financial  
 20 statements through the end of the licensee's previous fiscal year that  
 21 reflect that the applicant has a net worth of at least twenty-five thousand  
 22 dollars (\$25,000).

23 (B) The audited financial statements shall be:

24 (i) Prepared by an independent certified public  
 25 accountant;

26 (ii) Prepared in accordance with generally accepted  
 27 accounting principles as promulgated by the Financial Accounting Standards  
 28 Board; and

29 (iii) Accompanied by an unqualified opinion  
 30 acceptable to the commissioner; and

31 ~~(C)(3) Paying~~ Pay the commissioner an annual renewal fee of three  
 32 hundred fifty dollars (\$350) for the licensee's principal office and one  
 33 hundred dollars (\$100) for each of the licensee's licensed branch ~~office~~  
 34 offices.

35 ~~(b) A loan officer's license shall become invalid on the last day of~~  
 36 ~~the twelfth month from the date of issuance unless on or before that date, or~~

1 ~~another date as the commissioner designates, the loan officer files a renewal~~  
 2 ~~application on the form prescribed by the commissioner and pays an annual~~  
 3 ~~renewal fee of fifty dollars (\$50.00).~~

4 ~~(e)(1)(b)~~ The failure of a mortgage broker, mortgage banker, or  
 5 mortgage servicer to timely file a renewal application shall subject ~~that~~  
 6 person the licensee to a late fee of ~~fifty dollars (\$50.00)~~ twenty-five  
 7 dollars (\$25.00) for each day, up to a maximum of ~~thirty (30)~~ sixty (60)  
 8 days, that the renewal application is late.

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

10 (1) File an application with the commissioner in the form  
 11 prescribed by the commissioner no later than sixty (60) days prior to the  
 12 expiration date of the license; and

13 (2) Pay an annual renewal fee of fifty dollars (\$50.00).

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

16 ~~(2)(e)(1)~~ The Any late fee shall be assessed pursuant to subsection  
 17 (b) or subsection (d) of this section shall be in addition to the renewal  
 18 application fee under subsection (a) or subsection (c) of this section, but  
 19 may be waived, in whole or in part, at the sole discretion of the  
 20 commissioner for good cause shown.

21 ~~(3)(2)~~ If a mortgage broker, mortgage banker, ~~or~~ mortgage  
 22 servicer, or loan officer fails to file a renewal application within ~~thirty~~  
 23 ~~(30)~~ sixty (60) days after the date the renewal application is due, the  
 24 commissioner may deem the license to be abandoned and ~~terminated~~ surrendered  
 25 and may require the licensee to comply with the requirements for the initial  
 26 issuance of a license under this subchapter in order to continue in business.

27 ~~(4)(3)~~ The commissioner shall not reissue any license for which  
 28 a late fee has accrued as a result of a person's failure to timely ~~renew a~~  
 29 ~~license~~ file a renewal application unless the late fee has been paid or  
 30 waived by the commissioner for good cause shown.

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

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

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

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

1                   ~~(B) Submit to the commissioner the information required~~  
2 ~~under § 23-39-505(a)(3)(D) and any other information deemed relevant by the~~  
3 ~~commissioner; and~~

4                   ~~(C) Certify that the licensee continues to meet the~~  
5 ~~qualifications under § 23-39-505.~~

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

9  
10           23-39-507. Continuing education.

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

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

- 20                   (1) The content of continuing education courses;
- 21                   (2) Accreditation of continuing education sponsors and programs;
- 22                   (3) Accreditation of videotape or other audiovisual programs;
- 23                   (4) Computation of credit;
- 24                   (5) Special cases and exemptions;
- 25                   (6) General compliance procedures; and
- 26                   (7) Sanctions for noncompliance with the continuing education
- 27 requirements.

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

31  
32           23-39-508. Managing principals and branch managers.

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

36           (b) ~~Each principal office and branch office of a mortgage broker or~~

1 ~~mortgage banker licensed under this subchapter shall have a branch manager~~  
 2 ~~who meets the experience requirements under § 23-39-505(e)(1).~~ Any  
 3 individual licensee who operates as a sole proprietorship shall be considered  
 4 a managing principal for the purposes of this subchapter.

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

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

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

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

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

22 ~~(f)(g)~~ (1) Any mortgage broker, ~~or~~ mortgage banker, or mortgage  
 23 servicer that does not comply with this section shall pay a ~~fine~~ late fee  
 24 equal to ten dollars (\$10.00) for each day that he or she fails to notify the  
 25 commissioner of the violation, not to exceed six hundred dollars (\$600).

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

28 ~~(2)(3)~~ The commissioner may revoke or suspend the license of ~~or~~  
 29 may deny the renewal of any mortgage broker, ~~or~~ mortgage banker, or mortgage  
 30 servicer who fails to pay any ~~fine issued~~ late fee assessed under subdivision  
 31 ~~(f)(1)~~(g)(1) of this section.

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

34  
 35 23-39-509. Offices - Address changes - Location of records.

36 (a) Each mortgage broker, mortgage banker, and mortgage servicer shall

1 maintain a principal place of business.

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

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

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

14 (2)(A) Any licensee that does not comply with subdivision (d)(1)  
 15 of this section shall pay a ~~fine~~ late fee equal to ten dollars (\$10.00) for  
 16 each day that he or she fails to notify the commissioner, up to a maximum of  
 17 six hundred dollars (\$600).

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

20 (3) The commissioner may revoke or suspend the license of ~~or may~~  
 21 ~~deny the renewal of the license of the~~ any mortgage broker, mortgage banker,  
 22 or mortgage servicer who fails to pay any ~~fine issued~~ late fee assessed under  
 23 subdivision (d)(2) of this section.

24  
 25 SECTION 2. Arkansas Code § 23-39-511 is amended to read as follows:  
 26 23-39-511. Records - Escrow funds or trust accounts.

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

- 29 (1) The applicant's name;
- 30 (2) The date of application;
- 31 (3) The applicant's place of residence; and
- 32 (4) Whether the license was granted or refused.

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

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



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

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

4 (C) Be open to public inspection.

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

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

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

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

19 (e)(1) A licensee shall maintain in a segregated escrow fund or trust  
 20 account any funds that come into the licensee's possession but that are not  
 21 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 SECTION 3. Arkansas Code § 23-39-513(1), concerning prohibited  
 28 activities in mortgage loan transactions, is amended to read as follows:

29 In addition to the other activities that are prohibited under this  
 30 subchapter, it is unlawful for any person other than a person described in §  
 31 23-39-502(6)(B)(vii) in the course of any mortgage loan transaction or  
 32 activity:

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

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SECTION 4. Arkansas Code § 23-39-514 is amended to read as follows:  
23-39-514. Disciplinary authority.

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

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

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

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

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

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

(i) Any felony;

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

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

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

1 (E) Is the subject of an order of the commissioner;  
 2 (i) ~~denying~~ Denying, suspending, or  
 3 revoking that person's license as a mortgage broker, mortgage banker,  
 4 mortgage servicer, loan officer, securities broker-dealer, securities agent,  
 5 investment adviser, or investment adviser representative; or  
 6 (ii) Directing that person to cease and desist from  
 7 any activity regulated by the commissioner, including any order entered  
 8 pursuant to Acts 1977, No. 806, as amended;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (C) The commissioner shall schedule a hearing to be held

1 within thirty (30) days after the commissioner receives a timely written  
2 request for a hearing.

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

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

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

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

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

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

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

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

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

33 (g)(1) The commissioner or the commissioner’s designee may:

34 ~~(1)~~(A) Administer oaths and affirmations;

35 ~~(2)~~(B) Issue subpoenas to require the attendance of and to  
36 examine under oath all persons whose testimony the commissioner deems

1 relevant to the person's business; and

2 ~~(3)(C)~~ Require the production of any books, papers,  
 3 correspondence, memoranda, agreements, or other documents or records which  
 4 the commissioner deems relevant or material to the inquiry.

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

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

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

- 16 (i) Attending and testifying;
- 17 (ii) Producing any document or record;
- 18 (iii) Obeying the subpoena of the commissioner or  
 19 any officer designated by the commissioner;

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

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

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

35 (3) In addition, the applicant or licensee shall pay the actual  
 36 hotel and traveling expenses of the examiner traveling to and from the office

1 of the commissioner while the examiner is conducting an examination under  
 2 subdivision (h)(1) of this section.

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

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

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

17 (2) An opportunity for hearing; ~~and~~

18 ~~(3) Written findings of fact and conclusions of law.~~

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

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

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

35 (B)(i) Summarily order the licensee or person to cease and  
 36 desist from the act or practice under subdivisions (c)(1) and (d)(1) of this

1 section, apply to the Pulaski County Circuit Court to enjoin the act or  
 2 practice and to enforce compliance with this subchapter or any rule,  
 3 regulation, or order issued under this subchapter, or both.

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

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

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

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

14 (B) A declaratory judgment;

15 (C) An accounting;

16 (D) Disgorgement;

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

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

21 (4) The court may not require the commissioner to post a bond.  
 22

23 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
 24 General Assembly of the State of Arkansas that the requirement of three (3)  
 25 years' experience for branch managers and their on-site physical presence at  
 26 the branch for which they are designated as manager creates a hardship  
 27 resulting in the lack of ability of some companies to become licensed in this  
 28 state; and that this act is immediately necessary because the provisions of  
 29 this act relaxing these requirements will increase the ability of companies  
 30 to effectively manage their branch offices. Therefore, an emergency is  
 31 declared to exist and this act being immediately necessary for the  
 32 preservation of the public peace, health, and safety shall become effective  
 33 on:

34 (1) The date of its approval by the Governor;

35 (2) If the bill is neither approved nor vetoed by the Governor,  
 36 the expiration of the period of time during which the Governor may veto the



1 bill; or

2 (3) If the bill is vetoed by the Governor and the veto is  
3 overridden, the date the last house overrides the veto.

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APPROVED: 4/05/2005

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