

Act No. 442
Public Acts of 2012
Approved by the Governor
December 22, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Green and Booher

ENROLLED SENATE BILL No. 1283

AN ACT to amend 1987 PA 173, entitled "An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties," by amending section 1a (MCL 445.1651a), as amended by 2009 PA 76.

The People of the State of Michigan enact:

Sec. 1a. As used in this act:

(a) "Affiliate" means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) "Board" means the mortgage industry advisory board created in section 33.

(c) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of licensing and regulatory affairs or his or her authorized agent.

(d) "Construction loan" means a mortgage loan to construct a 1-to-4 family dwelling, that is approved and closed before completion of the construction of the improvement on the real property.

(e) "Control person" means a director or executive officer of a licensee or registrant or an individual who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(f) "Depository financial institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union, or an entity of the federally chartered farm credit system.

(g) "Employee" means an individual who meets both of the following:

(i) Has an employment relationship acknowledged by that individual and the licensee or registrant that engages that individual to originate mortgage loans.

(ii) Is treated as an employee by the licensee or registrant that engages that individual to originate mortgage loans for compliance with federal income tax laws.

(h) "Executive officer" means an officer, member, or partner of a licensee or registrant. The term includes the chief executive officer, president, vice president, chief financial officer, controller, or compliance officer or any other individual who holds any other similar position.

(i) "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(j) "Firm commitment" means an underwriting in which a broker-dealer commits to buy the mortgage loan or the entire issue of securities based upon or backed by 1 or more mortgage loans and assumes all financial responsibility for any unsold securities.

(k) "Individual investor" means a person that resides in this state or has its principal place of business in this state. The term does not include a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, 15 USC 80a-1 to 80a-64, pension or profit sharing plan if the assets of the plan are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or a mortgage lender or mortgage servicer.

(l) "License" means a license issued under this act.

(m) "Licensed loan officer" means a loan officer who is licensed as a mortgage loan originator under the mortgage loan originator licensing act.

(n) "Licensee" means a person licensed or required to be licensed under this act.

(o) "Loan officer" means an individual who is an employee or agent of a mortgage broker, mortgage lender, or mortgage servicer; who originates mortgage loans; and who is not an employee or agent of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

(p) "Mortgage broker" means a person that, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans.

(q) "Mortgage lender" means a person that, directly or indirectly, makes or offers to make mortgage loans.

(r) "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families. Mortgage loan does not include any of the following:

(i) A home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(ii) A loan transaction in which the proceeds are not used primarily for a personal, family, or household purpose.

(s) "Mortgage servicer" means a person that, directly or indirectly, services or offers to service mortgage loans.

(t) "Originate" means any of the following:

(i) To negotiate, arrange, or offer to negotiate or arrange a mortgage loan between a mortgage lender and 1 or more individuals.

(ii) To place, assist in placing, or find a mortgage loan for 1 or more individuals.

(u) "Person" means an individual, corporation, limited liability company, partnership, association, governmental entity, or any other legal entity.

(v) "Real estate broker" means a broker or associate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(w) "Real estate salesperson" means a salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(x) "Register" means filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in this state and the payment of any fees required under this act, along with the other documents, proofs, and fees required by the commissioner.

(y) "Registrant" means a person that is registered under section 6 or required to register under section 6.

(z) "Secondary mortgage loan act" means the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.

(aa) "Service" means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor