THE SECONDARY MORTGAGE LOAN ACT

Act 125 of 1981

AN ACT to regulate secondary mortgage loans; to regulate secondary mortgage brokers, lenders, and servicers; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to provide remedies and prescribe penalties.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 444, Imd. Eff. Dec. 27, 1988 ;-- Am. 1989, Act 66, Imd. Eff. June 16, 1989 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Popular Name: Secondary Mortgage Loan Act

The People of the State of Michigan enact:

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493.51 Short title; definitions.

Sec. 1.

(1) This act shall be known and may be cited as "the secondary mortgage loan act".

(2) As used in this act:

(a) "Broker" means a person who, directly or indirectly, does 1 or both of the following:

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

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

(b) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of energy, labor, and economic growth or his or her authorized representatives.

(c) "Control person" means a director or executive officer of a licensee or registrant or a person 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.

(d) "Depository financial institution" means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(e) "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 secondary mortgage loans.

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

(f) "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 an individual holding any other similar position.

(g) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

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

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

(k) "Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(l) "Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

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

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

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

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

(o) "Registrant" means a person that is registered or required to register as a broker, lender, or servicer under this act. The term does not include a depository financial institution.

(p) "Secondary mortgage loan" means a loan that has a term of 90 days or more; that is made to a person for personal, family, or household purposes; and that is secured by a mortgage on an interest in real property that is used as a dwelling and is subject to a lien of 1 or more outstanding mortgages. A secondary mortgage loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, a secondary mortgage loan is subject to this act and all other applicable laws of this state.

(q) "Secondary mortgage loan officer" means an individual who is an employee or agent of a broker, lender, or servicer; who originates secondary 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.

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

(s) "Servicer" means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1989, Act 66, Imd. Eff. June 16, 1989 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2002, Act 392, Imd. Eff. May 30, 2002 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 14, Imd. Eff. Apr. 9, 2009 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled

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at MCL 550.991.
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493.52 Broker, lender, or servicer; license or registration required; exemption; use of name or assumed name.

Sec. 2.

(1) A person shall not act as a broker, lender, or servicer without first obtaining a license under this act or registering under section 3a, unless 1 or more of the following apply:

(a) The person is providing secondary mortgage loan officer services as an employee or agent of only 1 broker, lender, or servicer and is a licensed secondary mortgage loan officer if that registration is required under the mortgage loan originator licensing act.

(b) The person is licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(c) The person acts as a lender but makes or negotiates 2 or fewer secondary mortgage loans in a calendar year.

(d) The person acts as a servicer but services 10 or fewer secondary mortgage loans in a calendar year.

(e) The person is an individual and an employee of a professional employer organization, as that term is defined in section 113 of the Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting as a secondary mortgage loan originator of only 1 broker or lender. The broker or lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 6.

(2) By October 31, 1997, a servicer that was exempt from regulation under this act shall either file with the commissioner an application for a license or registration under section 3 or discontinue all activities subject to this act.

(3) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, a person subject to this act shall not include in its name or assumed name the words "bank", "banker", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee to use the term "mortgage banker" or "mortgage banking" in its name or assumed name.

(4) A person subject to this act whose name or assumed name on January 1, 1997 contained a word prohibited by subsection (3) may continue to use that name or assumed name.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 164, Eff. Sept. 1, 1988 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2007, Act 46, Imd. Eff. July 17, 2007 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III

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transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.52a-493.52d Repealed. 2009, Act 77, Eff. July 31, 2010.

Compiler's Notes: The repealed sections pertained to performance of sevices as secondary mortgage loan officer; information available to public; remuneration; registration; conditions requiring notice.

493.53 Application for license or registration; form and contents.

Sec. 3.

(1) An application for a license or registration under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant, each member if the applicant is a partnership, association, or limited liability company, and of each officer, director, and stockholder if the applicant is a corporation.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.53a Broker, lender, or servicer; registration with commissioner; form.

Sec. 3a.

The following persons shall register with the commissioner on a form prescribed by the commissioner:

(a) A broker, lender, or servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation.

(b) A broker, lender, or servicer approved as an issuer or servicer by the government national mortgage association.

(c) A broker, lender, or servicer that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a registrant under that act if the registrant is a mortgage broker, mortgage lender, or mortgage servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation, or a mortgage broker, mortgage lender, or mortgage servicer approved as an issuer or servicer by the government national mortgage association.

(d) A broker, lender, or servicer that is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)
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institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.54 Fees.

Sec. 4.

(1) At the time of making an application for a license, the applicant shall pay to the commissioner a fee for investigating the applicant as provided by section 6a.

(2) At the time of making an application for license or registration and annually thereafter, the applicant shall pay an annual operating fee as provided in section 6a.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)
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493.55 Investigation; issuance or refusal to issue license.

Sec. 5.

(1) Upon the filing of an application for a license and the payment of the required fees and the filing of proof of financial responsibility as the commissioner requires, the commissioner shall investigate the facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a license, and, as applicable, the applicant's shareholders, directors, officers, partners, members, and trustees command the confidence of the community and warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently as required by this act, the commissioner shall issue to the applicant a license to engage in the business of brokering, making, or servicing secondary mortgage loans under this act.

(2) For an applicant for a registration, the commissioner shall approve the application if the commissioner finds that the applicant meets any 1 of the requirements of section 3a.

(3) A license or registration issued under this section does not approve the use of, or indemnify the licensee or registrant against claims for the improper use of the business name stated in the license.

(4) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 11.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III

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493.56 License or registration; filing application or renewal; bond or letter of credit; claims filed against proof of financial responsibility; maintenance of net worth; determination; assets excluded from computation.

Sec. 6.

(1) Except as otherwise provided in this section, at the time of filing an application for a license or registration or renewal of a license or registration, an applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(i) $25,000.00 for a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender.

(ii) $125,000.00 for a license or registration to act as a servicer.

(b) Provide proof of financial responsibility by 1 of the following:

(i) A corporate surety bond payable to the commissioner that expires no earlier than the date the license or registration expires, executed by a corporate surety approved by the commissioner.

(ii) An irrevocable letter of credit upon which the applicant for a license or registration is the obligor that expires no earlier than the date the license or registration expires, that is issued by a depository financial institution, and the terms of which are approved by the commissioner.

(2) The bond or letter of credit required under subsection (1) shall be conditioned upon the licensee or registrant conducting its business as required under this act and all the rules promulgated under this act, and the payment of all money that becomes due to borrowers, secondary mortgage loan applicants, and the commissioner.

(3) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under this section in a manner that, in his or her discretion, best protects the public interest.

(4) Claims may only be filed against a proof of financial responsibility filed with the commissioner under this section by the commissioner and the licensee's or registrant's borrowers, secondary mortgage loan applicants, and loan servicing customers.

(5) Claims filed against a proof of financial responsibility filed with the commissioner under this section by a borrower or loan applicant shall involve only secondary mortgage loans or secondary mortgage loan applications secured or to be secured by real property used as a dwelling located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee or registrant.

(6) The commissioner may file a claim against a proof of financial responsibility filed with the commissioner under this section for payment of fines or fees due and payable to the commissioner and reimbursement of expenses incurred in investigating the licensee or registrant and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

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(7) In the event that valid claims exceed the amount of a proof of financial responsibility filed with the commissioner under this section, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

(8) A licensee that acts as a broker and that receives funds from a prospective borrower before the closing of the secondary mortgage loan shall maintain a net worth of not less than $25,000.00. A licensee that acts as a lender shall maintain a net worth of not less than $25,000.00. A licensee that acts as a servicer shall maintain a net worth of not less than $100,000.00.

(9) Net worth under subsection (8) is determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. An applicant shall disclose its net worth on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and in accordance with generally accepted accounting principles. The following assets are excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than the applicant.

(b) An asset, except a construction loans receivable, secured by mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.

(c) An amount in excess of the lower of the cost or market value of mortgage loans in foreclosure, or real property acquired through foreclosure.

(d) An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates that is greater than the market value of the assets.

(e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

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History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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493.56a Registration or license; expiration; renewal; filing financial statement; exemption; fees; failure to submit reports or fees; disposition of money received; "MBLSLA fund" defined; limitation on fees; annual report; additional reports; false statement as felony.

Sec. 6a.

(1) A registration or license, unless it is renewed, expires on December 31 of each year. A person may renew a registration or license by filing an application for license or registration renewal and paying the annual operating fee for the succeeding year. The application and payment shall be received by the commissioner on or before a date prescribed by the commissioner.

(2) Not later than 90 days after close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the

fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) On a form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant represents to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

(3) A registrant that is a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that timely files with the commissioner the financial statement required under section 7 of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1657, is exempt from the filing requirement of subsection (2).

(4) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for a license shall pay to the commissioner a fee for investigating the applicant for a license and the annual operating fee established by the commissioner under subsection (5). To renew a license or registration that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee.

(5) If an initial license or registration described in subsection (4) will have an effective date of July 1 or later, the initial annual operating fee for that license is 1/2 of the annual operating fee.

(6) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) For the investigation of an applicant for a license, a fee of not less than $400.00 or more than $1,000.00.

(b) Subject to subsection (5), an annual operating fee for each licensee or registrant, based upon the number of secondary mortgage loans the licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under subsection (13).

(c) For amending or reissuing a license or registration, a fee of not less than $15.00 or more than $200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine or investigate the records of the licensee or registrant and the cost of independent investigators employed under section 6b(3)(e).

(7) Fees received under this act are not refundable.

(8) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee or registrant for the recovery of the fees and penalties together with interest and costs.

(9) A licensee or registrant that fails to submit to the commissioner the reports as required by subsections (2) and (13) is subject to a penalty of $25.00 for each day a required report is delinquent or $1,000.00, whichever is less.

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(10) A license or registration renewal fee that is not received on or before December 31 is subject to a penalty of $25.00 for each day the fee is delinquent or $1,000.00, whichever is less.

(11) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(12) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.

(13) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required under this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required under this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

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History: Add. 1997, Act 91, Imd Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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493.56b Powers of commissioner.

Sec. 6b.

(1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state.

(2) In addition to the other powers granted by this act, the commissioner may do any of the following:

(a) Deny an application for a license or registration.

(b) Conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act.

(c) Investigate complaints filed against licensees or registrants.

(d) Advise the attorney general or the prosecuting attorney of a county in which a broker, lender, or servicer is conducting business that the commissioner believes a licensee, registrant, or other person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business of the broker, lender, or servicer or prosecute violations of this act.

(e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.

(f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act under section 14.

(g) Suspend, revoke, or refuse to issue a license or registration under section 11.

(h) Assess a civil fine under section 27.

(i) Appoint a conservator under section 12a.

(j) Issue an order to prohibit a person from being employed by, an agent of, or control person of, a licensee or registrant under section 14a.

(k) Censure a licensee or registrant.

(3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Issue a subpoena under section 15.

(b) Administer oaths under section 15.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee, registrant, or an affiliate of a licensee or registrant, maintains business-related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:

(i) To the attorney general.

(ii) To a regulatory agency.

(iii) In connection with an enforcement action brought under this or another applicable act.

(iv) To law enforcement officials.

(v) To persons authorized by the Ingham county circuit court to receive the information.

(e) Employ independent investigators to conduct a part or all of an investigation, in the case of an investigation other than an examination.

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History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2002, Act 392, Imd. Eff. May 30, 2002 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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493.57 Repealed. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's Notes: The repealed section pertained to duties of commissioner upon refusal to issue license.

Popular Name: Secondary Mortgage Loan Act

493.58 Summary suspension of license or registration; order; affidavit; service; filing request for hearing; duration of license suspension; record.

Sec. 8.

(1) The commissioner may issue an order summarily suspending a license or registration under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, supported by an affidavit that an imminent threat of financial loss or imminent threat to the public welfare exists. The order to summarily suspend a license or registration shall be served upon the licensee or registrant.

(2) A licensee or registrant upon which an order to summarily suspend its license or registration has been served shall have 20 days after the date of service of the order within which to file with the commissioner a request for a hearing.

(3) A hearing shall be promptly held upon receipt of a request for a hearing filed by a licensee or registrant.

(4) A summary suspension of a license or registration shall continue until the commissioner finds that the imminent threat of financial loss and imminent threat to the public welfare no longer exist.

(5) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

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History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.59 Order in addition to other legal actions.

Sec. 9.

A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or registration shall be in addition to an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license or registration, or any other legal action.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III

transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.60 Complaint; forwarding to licensee or registrant; response; investigation or administrative action.

Sec. 10.

(1) Any person may file a complaint with the commissioner alleging that a licensee or registrant has violated this act or a rule promulgated or an order issued under this act.

(2) The commissioner may forward the complaint to the licensee or registrant against which the complaint is filed.

(3) The commissioner shall request that the licensee or registrant respond to the complainant and provide the commissioner with a copy of the response within a specified period. If the licensee or registrant fails to respond to the complainant within the specified period, or fails to handle the complaint to the satisfaction of the commissioner, the commissioner may commence an investigation or administrative action against the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

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493.61 Suspension, revocation, or refusal to issue or renew license or registration; notice; hearing; findings; facts or conditions; surrender of license or registration; preexisting contract not affected; lost or destroyed license or registration certificate.

Sec. 11.

(1) The commissioner shall give notice to a licensee, registrant, or applicant of the commissioner's intention to enter an order to suspend or revoke a license or registration or to refuse to issue a license or registration. The notice shall be in writing and served personally or sent by certified mail to the licensee, registrant, or applicant.

(2) A licensee, registrant, or applicant may request a hearing to contest the intention to enter an order or refusal under subsection (1) within 20 days after service of the notice. If a hearing regarding suspension, revocation, or refusal to issue a license or registration is not requested, the commissioner shall enter a final order regarding the suspension, revocation, or refusal to issue a license or registration. The hearing shall be conducted under the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The commissioner may suspend, revoke, or refuse to issue or renew a license or registration if he or she finds that the licensee or registrant or an owner, director, officer, member, partner, stockholder, employee, or agent of a licensee or registrant has done any of the following:

(a) Made a material misstatement in an application.

(b) Engaged in fraud, deceit, or material misrepresentation in connection with any transaction subject to this act.

(c) Failed after 10 days' written notice of default, to pay an annual operating fee, to maintain in effect a bond as required by the commissioner, or to comply with a demand, ruling, or requirement of the commissioner lawfully made under this act.

(d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated under this act.

(3) The commissioner may suspend, revoke, or refuse to renew a license or registration upon a finding of a fact or condition that, if the fact or condition had existed at the time of the original application for the license or registration, clearly would have warranted the commissioner to refuse to issue the license or registration originally.

(4) A licensee or registrant may surrender a license or registration by delivering to the commissioner the license or registration with written notice that the licensee or registrant surrenders the license or registration. The surrender, suspension, or revocation of a license or registration under this act shall not affect the licensee's or registrant's civil or criminal liability for acts committed in violation of this act. The surrender of a license or registration does not affect a proceeding to suspend or revoke a license or registration.

(5) Except as otherwise provided by law, a surrender, suspension, or revocation of a license or registration does not impair or affect the obligation of a preexisting contract between the licensee or registrant and another person.

(6) A licensee or registrant whose license or registration certificate has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee or registrant surrenders the license or registration.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

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493.62 Contracts or commitments made prior to suspension or revocation.

Sec. 12.

(1) This act does not prevent a person whose license or registration has been suspended or revoked from continuing to service secondary mortgage loans under servicing contracts in existence at the time of the suspension for a period not to exceed 6 months after the date of the entry of the final decision in the contested case suspending or revoking the license or registration.

(2) In the event of a summary suspension or revocation, the commissioner shall have discretion to order the licensee or registrant to cease all activities including the servicing of secondary mortgage loans and the closing of secondary mortgage loans under any commitments to make secondary mortgage loans issued by a person prior to the suspension or revocation.

(3) For an administrative action other than a summary suspension or revocation, this act does not prevent a person whose license or registration has been suspended or revoked from making a secondary mortgage loan under a commitment to make a secondary mortgage loan issued by the person prior to the suspension or revocation. A person who received a commitment issued by a person whose license or registration has been suspended or revoked may, prior to closing the loan, terminate the commitment and receive a refund of all money paid to the person.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.62a Conservator; appointment; reimbursement of expenses; powers; termination; disposition of compensation and expenses; disbursement of funds and interest.

Sec. 12a.

(1) Notwithstanding section 12, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing secondary mortgage loans as required by this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require the conservator to provide a bond or security as the commissioner considers necessary. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred in connection with the conservatorship. The amount reimbursed shall be paid into the revolving fund provided for in subsection (4). The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and the possession of the books and records of the licensee or registrant. The licensee or registrant may transfer or assign the rights to service secondary mortgage loans to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the secondary mortgage loans are serviced as required by this act and the servicing contracts.

(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of secondary mortgage loans subject to any terms, conditions, and limitations as prescribed by the commissioner.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in connection with a conservatorship and all expenses for state supervision of conservatorship under this act shall be deposited in the state treasury and shall be directed to a financial institutions bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the financial institutions bureau for expenses incurred by the bureau in connection with conservatorships of licensees or registrants.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Constitutionality: In Wachovia Bank v Watters, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)
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transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.63 Duration of license or registration; reinstatement of suspended license or registration; issuing new license or registration; consent required for transfer or assignment; requirements for transfer.

Sec. 13.

(1) A license or registration remains in force until the date of expiration or until surrendered, revoked, or suspended under this act. The commissioner may reinstate a suspended license or registration or issue a new license or registration to a licensee or registrant whose license or registration has been revoked if the conditions under which the license or registration was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(2) A person shall not transfer or assign a license or registration without the consent of the commissioner. The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee or registrant that is a corporation, or more than 25% of the interest in a licensee or registrant that is a limited liability company or partnership or other unincorporated legal entity is considered a transfer of a license or registration for purposes of this subsection.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010
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493.64 Order to cease and desist; issuance; conditions; notice; hearing; failure to appear as consent; service or order; effective date and enforcement.

Sec. 14.

(1) If in the opinion of the commissioner a licensee or registrant is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate a law or rule, the commissioner may serve a notice as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee or registrant. The hearing shall be held not earlier than 30 days nor later than 60 days after service of the notice unless another date is set by the commissioner at the request of the licensee or registrant.

(3) If the licensee or registrant fails to appear at the hearing by a duly authorized representative, the licensee or registrant shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3), or if upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee or registrant an order to cease and

desist from the practice or violation. The order may require the licensee or registrant and its directors, officers, members, partners, trustees, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) If the commissioner issues a cease and desist order in conjunction with a summary suspension order, the cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

(7) Except as provided in subsections (5) and (6) and to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective at the expiration of 30 days after the service of the order upon the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 444, Imd. Eff. Dec. 27, 1988 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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493.64a Fraud.

Sec. 14a.

(1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for secondary mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date

the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002
Popular Name: Secondary Mortgage Loan Act

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493.64b Hearing; final decision; judicial review; stay of commissioner's order.

Sec. 14b.

(1) A hearing under section 14 or 14a shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 14 or 14a may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002
Popular Name: Secondary Mortgage Loan Act

493.64c Enforcement of order; jurisdiction.

Sec. 14c.

The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 8, 14, or 14a.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002
Popular Name: Secondary Mortgage Loan Act

493.64d Violation as misdemeanor; penalty.

Sec. 14d.

Any current or former executive officer, director, agent, or control person who violates a final order issued under section 14a is guilty of a misdemeanor punishable by a fine of not more than $5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002
Popular Name: Secondary Mortgage Loan Act

493.64e Violation of order; exceptions.

Sec. 14e.

A control person who is subject to an order issued under section 14a and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee or registrant after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee or registrant to an unrelated third party.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002
Popular Name: Secondary Mortgage Loan Act

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493.65 Subpoena of witnesses and evidence; oaths and affirmations; certain conduct as misdemeanor.

Sec. 15.

(1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) A person subpoenaed under this section who willfully refuses or neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.66 Failure to testify or comply with subpoena; court order; contempt.

Sec. 16.

If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the

attendance of the person and the giving of testimony or production of evidence. The court may punish by contempt a person who fails to obey the court's order.

History: 1981, Act 125, Imd. Eff. July 23, 1981
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.67 Maintaining records relating to conduct of business; availability; statement of borrower's account; ledger history; obligation of servicer; fee prohibited.

Sec. 17.

(1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner to enable the commissioner to determine whether the business of the licensee or registrant is conducted as required by this act and the rules promulgated under this act.

(2) The preservation of records by reproduction under the records media act, 1992 PA 116, MCL 24.401 to 24.403, constitutes compliance with this section.

(3) If the books, accounts, records, and documents are not made available in this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 6a(6)(d).

(4) If a licensee or registrant that is a servicer, in connection with a secondary mortgage loan, requires a mortgage escrow account, the licensee or registrant shall deliver to the borrower annually a statement of the borrower's account showing the unpaid principal balance of the secondary mortgage loan at the end of the immediately preceding 12-month period, the interest paid during the period, and the amount deposited into escrow and disbursed from escrow during the period.

(5) Within 25 days after receipt of a written request from the borrower, a servicer shall deliver to the borrower a ledger history of the borrower's account showing the date and amount of all payments made or credited to the account for the immediately preceding 12-month period, and the total unpaid balance.

(6) A servicer is not obligated to furnish to the borrower more than 1 annual statement and 1 ledger history upon written request of the borrower in a 12-month period.

(7) A fee shall not be charged the borrower under subsection (4) for the annual statement or for 1 ledger history furnished to the borrower in a 12-month period.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.68 Documents; preservation; other books, accounts, records, and documents.

Sec. 18.

(1) A licensee or registrant shall preserve and keep available for examination by the commissioner each secondary mortgage loan document in its possession or control, including

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the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the secondary mortgage loan is transferred or assigned, or the expiration of 2 years after the date the secondary mortgage loan is closed, whichever occurs first.

(2) If the secondary mortgage loan is transferred or assigned, the licensee or registrant shall preserve and keep available for examination by the commissioner copies of the promissory note, mortgage, truth-in-lending disclosure statement, and settlement statement in its possession or control for 2 years after the date the secondary mortgage loan is transferred or assigned.

(3) Notwithstanding any other provision of this act, each licensee or registrant shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a secondary mortgage loan for the period of time required by state or federal law.

(4) A licensee or registrant shall preserve all other books, accounts, records, and documents pertaining to the licensee's or registrant's business and keep them available for examination by the commissioner for not less than 2 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.69 Repealed. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's Notes: The repealed section pertained to rules prescribing minimum information required to be shown in books, accounts, and records.
Popular Name: Secondary Mortgage Loan Act

493.70 Making or offering to make secondary mortgage loan; terms and conditions.

Sec. 20.

A licensee or registrant shall not make or offer to make a secondary mortgage loan except on the terms and conditions authorized by this act and the rules promulgated under this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.71 Interest rate; limitation; computation; prepaid finance charge or fee.

Sec. 21.

(1) A licensee or registrant may charge, contract for, receive, or collect on a secondary mortgage loan an interest rate not exceeding the interest rate permitted by the credit reform

act, 1995 PA 162, MCL 445.1851 to 445.1864. Interest on a secondary mortgage loan under this act shall not be added or deducted in advance but shall be computed on the basis of the actual unpaid balance of the principal of the loan on a daily or monthly basis for the time actually outstanding until the loan is paid in full.

(2) This section does not prohibit a lender from offering the borrower, in connection with a secondary mortgage loan that involves other than open-end credit, an option to pay a prepaid finance charge in exchange for a lower contract interest rate or to charge a prepayment fee in the amount permitted under section 1c of 1966 PA 326, MCL 438.31c.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1982, Act 361, Imd. Eff. Dec. 23, 1982 ;-- Am. 1983, Act 43, Imd. Eff. May 12, 1983 ;-- Am. 1983, Act 251, Imd. Eff. Dec. 29, 1983 ;-- Am. 1984, Act 416, Imd. Eff. Dec. 28, 1984 ;-- Am. 1985, Act 155, Imd. Eff. Nov. 15, 1985 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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493.72 Charges and fees includable in principal; interest authorized by law; sale of insurance; hazard insurance; charges permitted by federal lending program.

Sec. 22.

(1) A licensee or registrant shall not directly or indirectly assess any charges or fees in connection with making a secondary mortgage loan, except for any of the following, which may be included in the principal of the loan:

(a) Charges for credit life insurance or credit accident and health insurance as defined in section 3 of the credit insurance act, 1958 PA 173, MCL 550.603, or any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, that is offered by the licensee or registrant and that the borrower has the option to purchase.

(b) If reasonable and necessary, the actual expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a secondary mortgage loan by any of the following, as applicable:

(i) The licensee.

(ii) The registrant.

(c) A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.

(d) Other charges authorized under the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(e) A reasonable annual fee for the privilege of receiving open-end credit from the licensee or registrant.

(2) The charges authorized under this section are in addition to interest authorized by law and are not a part of the interest collected or agreed to be paid on the secondary mortgage loan within the meaning of the law of this state that limits the rate of interest that may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant.

(3) Any insurance sold by a licensee or registrant in connection with a secondary mortgage loan must comply with the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or the credit insurance act, 1958 PA 173 MCL 500.601 to 500.624, as applicable.

(4) If a licensee or registrant requires a borrower to purchase hazard insurance, the licensee or registrant shall not require the borrower to purchase the insurance through a particular agency or agent or from a particular insurer.

(5) This section does not prohibit a licensee or registrant from imposing the charges that are permitted by any federal lending program designed to promote the making of secondary mortgage loans.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1994, Act 141, Imd. Eff. May 27, 1994 ;-- Am. 1994, Act 408, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.73 Instrument evidencing or securing secondary mortgage; contents.

Sec. 23.

An instrument evidencing or securing a secondary mortgage loan shall not contain any of the following:

(a) A power of attorney to confess judgment.

(b) A provision by which the debtor waives rights accruing under this act, any federal law, or law of this state.

(c) An assignment of or order for the payment of all or part of salary, wages, commissions, or other compensation for services earned or to be earned.

(d) A provision to compel, encourage, or induce a borrower to incorporate to evade the provisions of this act.

(e) A provision by which a debtor agrees to pay damages absent a judgment by a court.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act
Admin Rule: R 493.101 et seq. of the Michigan Administrative Code.

493.74 Licensee or registrant; prohibited conduct.

Sec. 24.

(1) A licensee or registrant shall not transfer or assign a secondary mortgage loan or a security directly representing an interest in 1 or more secondary mortgage loans before the disbursement of 75% or more of the proceeds of the secondary mortgage loan to, or for the benefit of, the borrower. This subsection shall not apply to any of the following:

(a) A land contract not considered to be an equitable secondary mortgage.

(b) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the proceeds for a limited period of time.

(c) A construction loan.

(d) A secondary mortgage loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the secondary mortgage loan.

(2) It is a violation of this act for a licensee or registrant to do any of the following:

(a) Suppress or withhold from the commissioner any information that the licensee or registrant possesses that would make the licensee or registrant ineligible for licensing or registration under this act or would warrant the commissioner's denial of a license or registration application.

(b) Violate any provisions of 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(c) Until proper disbursement is made, fail to place in a trust or escrow account held by a depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by a broker, lender, or servicer that is the portion of a payment on a secondary mortgage loan that the person is obligated to pay to a third party. The deposits shall include amounts paid to the holder of the secondary mortgage loan, amounts for property taxes and insurance premiums, and amounts paid under an agreement that requires, if the secondary mortgage loan is not closed, the amounts paid shall be refunded to the prospective borrower, or if the secondary mortgage loan is closed, the amounts paid shall be applied to fees and costs incurred at the time the secondary mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the secondary mortgage loan application, to obtain an appraisal, or to receive a credit report.

(d) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or refuse or fail, within a reasonable time, to furnish any information or make a report that may be required by the commissioner under this act.

(e) Be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(f) Refuse or fail to pay within a reasonable time expenses assessed under this act.

(g) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(h) Fail to make a secondary mortgage loan pursuant to, and in accordance with, a written commitment to make a secondary mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment prior to the expiration of the commitment.

(i) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a secondary mortgage loan application.

(j) Take a security interest in real property before closing the secondary mortgage loan to secure payment of fees assessed in connection with a secondary mortgage loan application.

(k) Except as otherwise provided under section 14e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2002, Act 392, Imd. Eff. May 30, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III

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transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.75 Violation of consumer credit protection act as violation of act.

Sec. 25.

A violation of the consumer credit protection act, Public Law 90-321, 82 Stat. 146, as amended by title VI of Public Law 96-221, 94 Stat. 168 or other applicable federal law is a violation of this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.76 Advertising; prohibited conduct.

Sec. 26.

(1) A licensee or registrant shall not, willfully or knowingly, make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or the availability of secondary mortgage loans.

(2) A licensee or registrant shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the intent of making loans at those or lower rates, and under the stated conditions, to secondary mortgage loan applicants who meet the standards or qualifications prescribed by the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
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493.76a Repealed. 2009. Act 77, Eff. July 31, 2010.

Compiler's Notes: The repealed section pertained to registration or license requirements.

493.77 Violation of act; making secondary mortgage loans without license as misdemeanor; penalty; civil fine; actions.

Sec. 27.

(1) In addition to the penalties provided by this act, a violation of this act with respect to a particular secondary mortgage loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) A person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative thereof who or which willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than $15,000.00, imprisonment for not more than 1 year, or both:

(a) Engages in this state in the business of a broker, lender, or servicer without a license or registration required under this act.

(b) Acts as a secondary mortgage loan officer in this state and is not a licensed secondary mortgage loan officer under the mortgage loan originator licensing act.

(c) Coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan, including, but not limited to, by doing any of the following:

(i) Representing or implying that a real estate appraiser will not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(ii) Representing or implying that a real estate appraiser will not be paid for an appraisal unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(3) A person who violates this act or directly or indirectly counsels, aids, or abets in a violation is liable, in addition to other penalties and forfeitures imposed by this act, for a civil fine of not more than $3,000.00 for each violation, except that a person shall not be fined more than $30,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation. The civil fine shall be sued for and recovered by the commissioner and shall be collected and enforced by summary proceedings by the attorney general.

(4) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to do any of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin a person from engaging in, or who is about to engage in, a method, act, or practice that violates this act.

(c) Recover actual damages resulting from a violation of this act or $250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action.

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History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2008, Act 530, Imd. Eff. Jan. 13, 2009 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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493.78 Rules.

Sec. 28.

The commissioner shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to administer and enforce this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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Admin Rule: R 493.101 et seq. of the Michigan Administrative Code.

493.79 Construction of act; applicability.

Sec. 29.

This act does not apply to a depository financial institution that is subject to other laws of this state, another state, or of the United States regulating the power of the depository financial institution to engage in secondary mortgage loan transactions or upon the conditions and limitations imposed by law upon the exercise of this power. This act does not apply to an affiliate or subsidiary of a depository financial institution or a depository financial institution holding company if the depository institution maintains an office or branch office in this state.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.79a Applicability of act to nonprofit corporation.

Sec. 29a.

(1) This act does not apply to a nonprofit corporation that makes, brokers, or services mortgage loans in connection with a neighborhood housing program assisted under the neighborhood reinvestment corporation act, title VI of Public Law 95-557, 42 U.S.C. 8101 to 8107.

(2) This act does not apply to a nonprofit corporation that makes or services secondary mortgage loans only in connection with mortgages made under a program described in section 25a(1)(b) and (c) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1675a, if the commissioner has determined that the nonprofit corporation is exempt from that act under section 25a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1675a.

History: Add. 1994, Act 261, Imd. Eff. July 5, 1994 ;-- Am. 1998, Act 372, Imd. Eff. Oct. 20, 1998
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.80 Persons permitted to make secondary mortgage loans.

Sec. 30.

(1) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act, and only in conformance with the interest rate limitations of 1966 PA 326, MCL 438.31 to 438.33, by either of the following:

(a) A salesperson acting as an agent for a residential builder, or a residential builder, licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, when made or negotiated in connection with the sale of a residential structure constructed by that builder.

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(b) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and engaged in the sale of real estate as a principal vocation, when made or negotiated in connection with a real estate sale where the real estate broker or salesperson affiliated with the broker represents either the buyer or seller.

(2) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act by a person to an employee of that person provided that the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1984, Act 124, Imd. Eff. June 1, 1984 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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493.81 Powers and duties of attorney general.

Sec. 31.

The powers and duties of the attorney general provided in this act are in addition to his existing powers and duties provided by statutes and common law, and nothing in this act shall impair or restrict the jurisdiction of any court in any action or proceeding by the attorney general under any other statute or common law.

History: 1981, Act 125, Imd. Eff. July 23, 1981
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
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