

MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT (EXCERPT)
Act 173 of 1987

445.1671 Books, accounts, records, and documents; preservation and examination; reports; false statement as felony; penalty.

Sec. 21. (1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner, conducted under the license or registration to enable the commissioner to determine whether the business of the licensee or registrant is conducted pursuant to this act and the rules promulgated under this act. The preservation of records by reproduction pursuant to the records media act constitutes compliance with this section. 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 8.

(2) A licensee or registrant shall preserve and keep available for examination by the commissioner each mortgage loan document in its possession or control, including, but not limited to, the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the mortgage loan is transferred or assigned, or the expiration of 3 years after the date the mortgage loan is closed, whichever occurs first. If the 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, land contract, truth-in-lending disclosure statements, and settlement statements in its possession or control for 3 years after the date the mortgage loan is transferred or assigned. 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 mortgage loan for the period of time required by state or federal law. 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 3 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

(3) 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 pursuant to 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 pursuant to this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1992, Act 206, Imd. Eff. Oct. 5, 1992.

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 note: 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.