

**LOUISIANA REVISED STATUTES  
TITLE 6 BANKS AND BANKING**

**CHAPTER 14. RESIDENTIAL MORTGAGE BROKERS AND LENDERS**

**PART I. GENERAL PROVISIONS**

**(CURRENT THROUGH 2021 REGULAR LEGISLATIVE SESSION)**

**§ 1081. Short title**

This Chapter shall be known and may be cited as the “Louisiana Secure and Fair Enforcement of Mortgage Licensing Act of 2009” or the “Louisiana S.A.F.E. Residential Mortgage Lending Act”.

**§ 1082. Purpose**

The Legislature of Louisiana does hereby declare that it is in the best interest of the citizens of the state to protect consumers in the most important financial investment most will make, the purchase of a home, by requiring the licensing and regulation of residential mortgage lenders, brokers, originators, and servicers. The purpose of this Chapter is to promote the safety and welfare of the people of the state by providing for regulatory oversight and by establishing educational requirements in a professional field in which unqualified individuals may injure or mislead the public.

**§ 1083. Definitions**

As used in this Chapter:

- (1) Repealed by Acts 2010, No. 743, §22(B), eff. July 1, 2010.
- (2) “Commissioner” means the commissioner of the office of financial institutions.
- (3) “Consumer” means a natural person who enters into or seeks to enter into a residential loan transaction for a personal, family, or household purpose.
  - (3.1) “Conventional reverse mortgage loan” means a reverse mortgage loan other than a program reverse mortgage loan.
- (4) “Depository institution” means the same as defined in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.
- (5) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (6) “Federally related mortgage loan” means an extension of credit to a consumer secured by a first mortgage on residential immovable property located in this state, including: a mobile home which will be immobilized pursuant to R.S. 9:1149.4 and designed principally for the occupancy of from one to four families; and which is one of the following:

(a) An extension of credit made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the federal government, or is made in whole or in part by any lender which is regulated by any agency of the federal government.

(b) An extension of credit made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the federal Department of Housing and Urban Development, or any other agency of the federal government or under or in connection with a housing or urban development program administered by the Department of Housing and Urban Development or a housing or related program administered by any other such agency.

(c) An extension of credit intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation.

(d) An extension of credit made in whole or in part by any creditor, as defined in Section 103(f) of the federal Consumer Credit Protection Act (15 U.S.C. §1602(f)), who makes or invests in consumer real estate loans aggregating more than one million dollars per year.

(7) “Immediate family member” means a spouse, child, sibling, parent, grandparent, grandchild, including stepparent, stepchild, stepsibling, and adoptive relationships.

(7.1) Repealed by Acts 2001, No. 617, §3, eff. June 22, 2001.

(8) “Mortgage broker” or “residential mortgage broker” means any person who, directly or indirectly, for compensation or the expectation of compensation, negotiates, places, or finds, or offers to negotiate, place, or find a residential mortgage loan for another person. “Mortgage broker” also shall include:

(a) An approved Federal Housing Administration loan correspondent.

(b) A residential mortgage lender who closes a residential mortgage loan in his own name but for whom the funding for the loan is provided by a third party lender in a process known as table funding.

(9) “Mortgage lender” or “residential mortgage lender” means any person who, directly or indirectly, originates or makes, or offers to originate or make, a residential mortgage loan for another person.

(10) “Mortgage loan originator” means an individual who for compensation or gain or with the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(11) “Mortgage servicer loss mitigation specialist” means a person who on behalf of the holder or mortgagee of a residential mortgage loan assists a borrower to modify or refinance either temporarily or permanently the borrower’s obligations in order to avoid default or foreclosure of the residential mortgage loan.

(11.1) “Mortgage servicing” means collecting or remitting payment for another, or the right to collect or remit payments for another, of any of the following: principal, interest, tax, insurance, or other payment under a mortgage loan.

(12) “Nationwide Mortgage Licensing System and Registry”, “licensing system”, or “NMLS&R” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators or successors thereof, for the state licensing and registration of state-licensed mortgage loan originators and the registration of registered loan originators as provided in P.L. 110-289, Title V, as amended, which licensing system includes but not limited to an online database which receives, collects, and stores application, license, enforcement action, and related information on a multi-state basis.

(13) “Person” means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity, or other group of individuals however organized.

(14) “Principal stockholder” means any person owning ten percent or more of the outstanding stock of a corporate mortgage broker or mortgage lender.

(14.1) “Program reverse mortgage loan” means a reverse mortgage loan offered under or intended to be insured by the Federal Housing Administration pursuant to Section 255 of the national Housing Act, 12 U.S.C. 1715z-20, as amended, and regulations and guidance issued thereunder by the secretary of the United States Department of Housing and Urban development or the commissioner of the Federal Housing Administration.

(15) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including any of the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of immovable property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of immovable property.

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of immovable property, other than in connection with providing financing with respect to any such transaction.

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(16) “Registered mortgage loan originator” means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution or a subsidiary that is either owned and controlled by a depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(17) “Residential immovable property” means any immovable property located in this state upon which is constructed or intended to be constructed a dwelling.

(18) “Residential loan transaction” means any agreement by a consumer with a mortgage broker, mortgage loan originator, mortgage loan servicer, or mortgage lender in connection with a residential mortgage loan.

(19) “Residential mortgage lender” means a person who engages in a residential mortgage lending activity as a mortgage broker or mortgage lender, or both.

(20) “Residential mortgage lending activity” means an activity, including electronic activity, engaged in for compensation or with the expectation of compensation in connection with a residential loan transaction, including the origination or funding of a residential mortgage loan and the negotiation and placement, or offering to negotiate, place, or fund a residential mortgage loan for another person, or servicing a mortgage loan.

(21) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in 15 U.S.C. 1602(v) or residential immovable property upon which is constructed or intended to be constructed a dwelling as defined in 15 U.S.C. 1602(v).

(21.1) “Reverse mortgage loan” means a nonrecourse loan secured by immovable property that meets all of the following criteria:

(a) The loan provides purchase money proceeds for the acquisition by a borrower of a domicile to be inhabited by the borrower as his principal domicile or cash advances to a borrower based on the equity or the value in a borrower’s inhabited principal domicile.

(b) The loan requires no payment of principal or interest until the entire loan becomes due and payable.

(22) “State” means any state of the United States, the District of Columbia, or any territory of the United States including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(23) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(24) The term “regularly engaged” means either of the following:

(a) Engaged in residential mortgage lending activity, during the previous or current calendar year, as a mortgage loan originator in connection with more than ten residential mortgage loans or in connection with any residential mortgage loan having a principal amount exceeding twenty-five thousand dollars, or employed by an employer who meets the thresholds set forth in Subparagraph (b) of this Paragraph.

(b) Engaged in residential mortgage lending activity, during the previous or current calendar year, as a mortgage loan broker, lender, or both, separately or combined, in connection with residential mortgage loans for which the combined original principal balance exceeds two hundred fifty thousand dollars or in connection with any residential mortgage loan having a principal amount exceeding twenty-five thousand dollars.

#### **§ 1084. Prohibition**

No person, directly or indirectly, shall engage in a residential mortgage lending activity in this state without complying with the provisions of this Chapter or the rules or regulations promulgated pursuant to this Chapter.

#### **§ 1085. Rules and regulations**

The commissioner shall promulgate rules and regulations in accordance with the Administrative Procedure Act as may be necessary to effectuate the purposes, administration, and enforcement of the provisions of this Chapter.

## **PART II. LICENSURE, REGISTRATION, AND CERTIFICATION**

### **§ 1086. Licensure requirement**

A. Except as otherwise provided in Subsection B of this Section, beginning on July 31, 2009, and unless otherwise exempt pursuant to this Chapter, no person shall engage in any residential mortgage lending activity in this state without first obtaining and maintaining annually the following:

- (1) A license and registration as a mortgage loan originator, or a license as a mortgage lender, mortgage broker or mortgage servicer.
- (2) A unique identifier.

B. Until July 31, 2010, the provisions of Subsection A of this Section shall not apply to the following:

- (1) A person whose residential mortgage lending activities were not subject to the licensing requirements pursuant to this Chapter on July 30, 2009.
- (2) A person engaged in residential mortgage lending activities pursuant to an exemption provided by this Chapter on July 30, 2009.

C. Beginning July 31, 2009, all persons to whom a license was issued and in effect pursuant to this Chapter on July 30, 2009, shall be required to meet all the requirements of this Chapter in order to obtain a renewal of a license issued pursuant to this Chapter.

D. For purposes of Subsection A of this Section, a person shall not be considered to be engaged in residential mortgage lending activity in this state unless that person is regularly engaged in residential mortgage lending activity. This Subsection shall have no effect if the federal Consumer Financial Protection Bureau determines that the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008(P.L.110-289) do not allow an exception from coverage for those not so regularly engaged.

### **§ 1087. Exemptions; annual registration statement; fees**

A. Any person authorized to engage in business as a credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, and any subsidiary of such person, and the employees of such person, shall be exempt from the provisions of this Chapter.

B. The following employers and their employees shall be exempt from the provisions of this Part:

- (1) Any person authorized to engage in business as a bank, savings bank, or savings and loan association under the laws of the United States, any state or territory of the United States, or the District of Columbia, and any direct or indirect subsidiaries of such entities, who are subject to general supervision and regulation, or audit or examination, by a regulatory body or agency of the United States, any state or territory of the United States, or the District of Columbia, and the

employees of such persons, including those acting as originators and their exclusive agents under written agreement.

(2) Any attorney licensed to practice law when such attorney is not actively engaged in the business of making or brokering residential mortgage loans and the residential mortgage lending activity is incidental to providing legal services.

(3) Any nonprofit corporation exempt from federal taxation under Section 501(c) of the Internal Revenue Code making residential mortgage loans to promote home ownership or home improvements for the disadvantaged.

(4) Any agency of the federal government, or a state or municipal government, or any quasi governmental agency making residential mortgage loans under the specific authority of the laws of any state or the United States.

(5) Any person acting as a fiduciary with respect to any employee pension benefit plan qualified under the Internal Revenue Code who makes residential mortgage loans solely to plan participants from plan assets.

(6) Any real estate investment trust.

(7) Any person acting in a fiduciary capacity conferred by the authority of any court.

(8) Any person licensed as a small business investment company by the United States Small Business Administration.

(9) Any mortgagee in a residential loan transaction in which the mortgagee is the former owner of the residential immovable property.

(10) Repealed by Acts 2005, No. 235, §2.

(11) Any insurance company authorized by the insurance commissioner of this state or any other state and any resident or nonresident insurance agent who holds an unexpired agent license under Title 22 of the Louisiana Revised Statutes of 1950 who brokers loans exclusively to an insurer.

(12) Any person authorized to engage in business as a licensed lender under the provisions of the Louisiana Consumer Credit Law, R.S. 9:3510 et seq., whose gross revenue from loans subject to the Louisiana Consumer Credit Law exceeds fifty percent of the licensee's gross revenue; however, such persons shall remain subject to the examination and enforcement provisions of R.S. 6:1091 and 1092 for those loans subject to R.S. 6:1081 et seq.

C. (1) Employees and the exclusive agents under written agreement of any person licensed pursuant to this Part which is a direct or indirect subsidiary of a financial or bank holding company, savings bank holding company, or thrift holding company, shall be exempt from the licensure and continuing education provisions of this Part.

(2) Any person exempt from licensure under Subsection B shall engage in residential mortgage lending activities only through natural persons who are licensed as a mortgage broker, mortgage lender, or originator, or who are registered according to the provisions of this Chapter, or who are exempt from the provisions of this Part.

D. Persons engaged in residential mortgage transactions subject to an exemption provided for in Subsection A, B, or C of this Section on or before July 30, 2009, may continue to be so engaged until July 30, 2010. Thereafter, the exemptions provided in Subsection A, B, or C of this Section shall expire and no longer have any effect. Effective July 31, 2010, no person previously exempt pursuant to Subsection A, B, or C of this Section may engage in residential mortgage lending activity without a license and a unique identifier issued pursuant to this Chapter, unless such person is exempt under an exemption provided for in this Chapter on or after July 31, 2009.

E. The following shall be exempt from the provisions of this Part applicable to persons engaged in residential mortgage lending activities as a residential mortgage loan originator:

(1) Registered mortgage loan originators, when acting for a depository institution described in R.S. 6:1083.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that is owned by and serves as the individual's residence.

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator, or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(5) Any individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator, or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(6) Any individual solely involved in extensions of credit, relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(7) An individual engaging solely in loan processor or underwriter activities, who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator. For the purposes of this Paragraph, the term "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under this Chapter. For purposes of this Paragraph, the term "clerical or support duties" may include subsequent to the receipt of an application:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan.

(b) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; provided however that an independent contractor may not engage in residential mortgage



loan origination activities as a loan processor or underwriter unless such independent contractor obtains and maintains a license under this Part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the NMLS&R.

(8) Individuals who are employees of a retailer of manufactured or modular homes as defined in R.S. 51:911.21 et seq., if the employees are performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular home and provided such individuals receive no compensation or other gain from a residential mortgage lender or a residential mortgage broker for the performance of the administrative or clerical tasks.

(9) Any individual who meets all of the following requirements:

(a) In any calendar year, originates five or fewer residential mortgage loans exclusively for a single federally chartered depository institution, and the loans are closed.

(b) Is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the single federally chartered depository institution.

(c) Enrolls with the Office of Financial Institutions as an individual who originates exclusively with a single federal depository institution until the time any registration with the Nationwide Mortgage Licensing System and Registry (NMLS&R) is required for the individual by federal law or regulation and a suitable category is created for that registration with the NMLS&R. Enrollment pursuant to this Subparagraph must be renewed annually with the Office of Financial Institutions.

(d) Is not barred from licensure pursuant to R.S. 6:1088(E)(2), (3), or (4), as determined by the commissioner of financial institutions.

(e) Is sponsored by a life insurance company or an affiliate of the company which is authorized to engage in business in this state and which is a licensed mortgage loan broker or originator, and which sponsorship shall include all of the following:

(i) Providing an undertaking of accountability supported by a surety bond equal to one million dollars, to meet the requirement of R.S. 6:1088(G)(1) and to cover all of the persons who are exempt pursuant to this Paragraph, which undertaking includes full and direct financial responsibility for the loan origination activities of each such exempt person.

(ii) Paying an annual fee on behalf of the individual exempted pursuant to this Paragraph in the amount of one-half the license fee for a mortgage loan originator pursuant to R.S. 6:1088.2(A)(4) to the Office of Financial Institutions.

(10) Individuals employed by nonprofit corporations exempt under R.S.6:1087(F)(11).

(11) Mortgage servicer loss mitigation specialists, if the commissioner determines that an exemption of a mortgage servicer loss mitigation specialist is compliant with the minimum standards set forth in P.L. 110-289, Title V.

F. The following employers and their employees shall be exempt from the provisions of this Part applicable to residential mortgage lenders, residential mortgage brokers, and mortgage servicers:

(1) Any attorney licensed to practice law when such attorney is not actively engaged in the business of making or brokering residential mortgage loans and the residential mortgage lending activity is incidental to providing legal services.

(2) Any nonprofit corporation exempt from federal taxation under Section 501(c) of the Internal Revenue Code making residential mortgage loans to promote home ownership or home improvements for the disadvantaged.

(3) Any agency of the federal government, or a state or municipal government, or any quasi governmental agency making residential mortgage loans under the specific authority of the laws of any state or the United States.

(4) Any person acting as a fiduciary with respect to any employee pension benefit plan qualified under the Internal Revenue Code who makes residential mortgage loans solely to plan participants from plan assets.

(5) Any real estate investment trust.

(6) Any person acting in a fiduciary capacity conferred by the authority of any court.

(7) Any person licensed as a small business investment company by the United States Small Business Administration.

(8) Any insurance company authorized by the insurance commissioner of this state or any other state and any resident or nonresident insurance producer who holds an unexpired producer license under Title 22 of the Louisiana Revised Statutes of 1950 who brokers loans exclusively to an insurer.

(9) Any depository institution or direct or indirect subsidiary thereof regulated by a federal banking agency.

(10) Any mortgagee in a residential loan transaction in which the mortgagee is the owner of the dwelling or residential immovable property.

(11) Any nonprofit corporation that is providing financial education and counseling to consumers, is exempt from federal taxation under Section 501(c) of the Internal Revenue Code, is approved by the United States Department of Housing and Urban Development (HUD) to provide housing counseling, and does not originate residential mortgage loans.

G. Any person exempt from licensure pursuant to Subsection F of this Section shall engage in residential mortgage lending activities only through natural persons who are licensed or registered as a mortgage broker, mortgage lender, or mortgage loan originator according to the provisions of this Chapter, or who are exempt from the provision of this Part.

## **§ 1088. Application for licensure; surety bond**

A. An application for a license under this Chapter shall be made under oath and on a form prescribed by the commissioner. The commissioner may grant restricted or conditional licenses. Each license shall expire on December thirty-first of the year in which the license was issued.

B. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators, mortgage lenders, and mortgage brokers to be licensed and registered through the NMLS&R and for this purpose the commissioner may establish such application information requirements and any other information as he deems necessary to participate in the NMLS&R. For the purposes of participating in the NMLS&R, the commissioner may waive or modify in whole or in part by rule, any requirements set forth in this Chapter and set forth such new requirements as he deems reasonably necessary to participate in the NMLS&R. In order to facilitate an orderly transition to the licensing requirements of this Chapter and to ensure timely receipt and consideration, the commissioner may direct that certain information, documents, or other items required pursuant to this Chapter be furnished to the commissioner or to the NMLS&R, and may be furnished periodically and separately from an application.

C. In addition to any other application information requirements of the commissioner, an applicant for licensure pursuant to this Chapter shall, in connection with an application for licensing, furnish to the commissioner, or if application procedures permit, the Nationwide Mortgage Licensing System and Registry, each of the following:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national, or international criminal history background check; provided however, that any person licensed on July 30, 2009, may satisfy this requirement by complying with the provisions of R.S. 6:121.2, until the earlier of being directed otherwise by the commissioner, or until December 31, 2010. For purposes of this Paragraph and Paragraph (3) of this Subsection, the commissioner may use the NMLS&R as a channeling agent for requesting and distributing information to and from any source as directed by the commissioner.

(2) Personal history and experience in a form prescribed by the NMLS&R, and when available through the NMLS&R.

(3) Authorization for the NMLS&R and the commissioner to obtain:

(a) An independent credit report obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(b) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; provided however, that persons licensed on July 30, 2009, need not furnish such authorization until directed to do so by the commissioner, but in any event no later than December 31, 2010.

D. To comply with the requirements of this Section, an applicant for a mortgage lender, mortgage broker or mortgage servicer license shall furnish the required information as to each owner and member if the applicant is a partnership or limited liability company, each officer,

director, and direct or indirect owner of ten percent or more of applicant's outstanding shares if the applicant is a corporation, and each settlor, trustee, and beneficiary if the applicant is a trust.

E. Notwithstanding any other law to the contrary, the commissioner may not issue a mortgage loan originator license, unless the commissioner finds that the applicant has the following minimum requirements:

(1) Paid all fees due to the office of financial institutions.

(2) Never had a mortgage loan originator license, mortgage lender license, or mortgage broker license revoked in any governmental jurisdiction unless such revocation is subsequently formally vacated.

(3) Has not been convicted of, pleaded guilty or nolo contendere to a felony in a domestic, foreign, or military court during the seven-year period preceding the date of application for licensing and registration or at any time preceding such date of application if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; provided however that any conviction for which an individual has received a pardon, the effect of which, according to the law of the jurisdiction granting the pardon, is to void the fact of the conviction, shall not be deemed a conviction for the purposes of this Subsection.

(4) Demonstrates financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator, mortgage lender, or mortgage broker will operate honestly, fairly, and efficiently within the purposes of this Chapter.

(5) Has completed the pre-licensing education requirement described in this Chapter.

(6) Has passed a written test that meets the test requirement described in this Chapter.

(7) Has obtained and maintains a surety bond in the amount required by this Section.

F. Notwithstanding any other law to the contrary, the commissioner may not issue a mortgage lender license, mortgage broker license, or mortgage servicer license unless the commissioner makes the minimum findings provided in Paragraphs (E)(1), (2), (3), and (4) of this Section, and as to each owner, partner, and member if the applicant is a partnership or a limited liability company, each officer, director, and direct or indirect owner of ten percent or more of the outstanding shares if the applicant is a corporation, and each settlor, trustee, and beneficiary if the applicant is a trust.

G. (1) Each applicant for any license governed by this Chapter shall, at the time of application for licensure or any renewal of a license, provide evidence of obtaining and maintaining a surety bond as provided for in this Section. Notwithstanding any other law to the contrary, or any other provision of this Chapter, a person who was licensed and met the financial responsibility requirements in whatever manner permitted by this Chapter on July 30, 2009, and who thereafter continuously meets those requirements in a manner permitted by this Chapter on July 30, 2009, shall be deemed in compliance with the requirements of this Subsection until December 31, 2009.

(2) The applicant shall furnish a surety bond authorized by a surety insurer licensed to do business in this state. The surety bond shall name the office of financial institutions and shall be

submitted as prescribed by the commissioner in connection with the application or renewal application.

(3) The required amount of the surety bond shall be determined by information in a report submitted by an applicant or licensee as prescribed by the commissioner. The total dollar amount of the original outstanding principal balance of all residential mortgage loans serviced or originated by the applicant secured by immovable property located in this state, including all such loans originated by mortgage loan originators employed by the applicant during the previous calendar year and reported pursuant to this Subsection shall be used to determine the amount of the bond. The required amount of the bond shall be determined by information in a report of total loan volume submitted by the applicant as prescribed by the commissioner. Total loan volume of the applicant shall be calculated by adding all of the following:

(a) The total dollar volume of loans which were originated by an applicant or licensee and funded by a mortgage lender.

(b) Total dollar volume of loans originated and funded by same applicant or licensee.

(c) The total dollar volume of loans funded by an applicant which were originated by a mortgage broker.

(d) The total outstanding principal balance as of the end of the previous calendar year for all residential mortgage loans serviced.

(4) The total dollar loan volume reported for the previous year shall be used to determine the amount of the surety bond required in accordance with the following:

| Dollar Amount of Total Loan Volume in Previous Calendar Years Lenders, Brokers, and Originators | Required Amount of Surety Bond |
|---|--------------------------------|
| \$0 - \$99,999,999  | \$25,000                       |
| \$100,000,000 or greater  | \$50,000                       |

(H) All persons licensed by the commissioner pursuant to this Part shall maintain a surety bond, according to the provisions of this Section, at all times during licensure and at all times that they are required to be licensed, as determined by the commissioner.

(I) Notwithstanding any other law to the contrary, in lieu of obtaining a surety bond, all applicants may meet the requirements of this Section by depositing in a federally insured depository institution located in Louisiana, designated by the applicant and approved by the commissioner, an amount equal to the amount of the surety bond otherwise required by the provisions of this Section, provided that the title of any such deposit account must include the words "for the benefit of" or "f/b/o the Louisiana Office of Financial Institutions", and require such other evidence of and information regarding such account as he may deem appropriate, provided that interest earned on such account shall be payable to person or entity making the deposit.

(J) An applicant for a mortgage originator license who is employed by, or is an exclusive agent for, a juridical person engaging in residential mortgage lending activities as a licensed mortgage broker, mortgage lender, or mortgage servicer may satisfy the requirement of furnishing a surety

bond by submitting evidence in a form and manner satisfactory to the commissioner that his employer or principal has obtained a surety bond which satisfies the requirements of this Section. Notwithstanding any provision of law to the contrary, a mortgage originator whose license remains in a status of inactive or any other status which would not allow them to originate mortgage loans shall not be required to maintain the surety bond as required by this Section until such time as their license is returned to a status which allows them to originate mortgage loans.

### **§ 1088.1. Licensing system; authorization; fees; required use**

A. Consistent with both the public interest and the purposes of this Chapter, the commissioner shall have the authority to take all action regarding the licensing system, in his discretion as he deems necessary and appropriate, including but not limited to all of the following:

- (1) Facilitating and participating in the establishment and implementation of the licensing system.
- (2) Entering into agreements and contracts including information-sharing agreements.
- (3) Contracting with third parties to process, maintain, and store information collected by the licensing system.
- (4) Authorizing the licensing system to collect fingerprints on the commissioner's behalf in order to receive criminal history records from the Federal Bureau of Investigation. For purposes of this Section, the commissioner may use the NMLS&R as a channeling agent for requesting information from and distributing information to the Department of Justice or any other governmental agency.
- (5) Requiring persons engaged in activities that require licensure by the commissioner to utilize the licensing system and to pay through the licensing system, in addition to those fees provided for in this Section for utilizing the licensing system, all other fees provided for by this Chapter.
- (6) Providing information to the licensing system.
- (7) Authorizing a third party to collect any fees associated with licensure on behalf of the commissioner.
- (8) Notwithstanding any other provision of law to the contrary, sharing any information or material which has been disclosed to the licensing system with any state or federal regulatory agencies having authority over residential mortgage lending activities.
- (9) Providing a process whereby a mortgage loan originator may challenge information entered into the NMLS&R regarding that mortgage loan originator.

B. Persons engaged in activities that require licensure pursuant to this Chapter shall be required to pay all applicable fees to utilize the licensing system.

C. After the date the licensing system is available for use, any filing or notification required by the commissioner shall be made through the online licensing system.

D. Notwithstanding any other provision of law to the contrary, the licensing system is not intended to and does not replace or affect the commissioner's authority to grant or deny licenses.

E. Before the end of the fiscal year, the commissioner shall submit the most recent annual report of the NMLS&R's proprietor, the State Regulatory Registry LLC or its successors, to the House Committee on Commerce, the Senate Committee on Commerce, Consumer Protections, and International Affairs, and the division of administration.

### **§ 1088.2 Application for licensure; application and renewal fees**

A. The application shall be accompanied by the following nonrefundable fees as determined by and paid as directed by the commissioner:

(1) In the case of an application for a license to act as a mortgage lender, mortgage broker, mortgage servicer, or combination of any, a license fee in an amount not to exceed five hundred dollars.

(2) In the case of an application for a license to act as an originator, a license fee in an amount not to exceed two hundred dollars.

(3) An annual license renewal fee for each person licensed as a mortgage broker, mortgage lender, or mortgage servicer in an amount not to exceed four hundred dollars.

(4) An annual license renewal fee for each originator in an amount not to exceed two hundred dollars.

B. If the applicant has multiple office locations, all such locations may be covered by a single license by including in the license application the address of each office operated by the applicant and the name and license number of the individual licensees engaging in residential mortgage lending activities at that location.

### **§ 1088.3 Application for renewal of license; restriction; late renewal fees**

A. (1) Each person licensed as a mortgage broker, mortgage lender, or mortgage servicer shall submit an annual license renewal application on or before December thirty-first of each year in a manner and form prescribed by the commissioner.

(2) Each mortgage loan originator who obtains a license and unique identifier, who renewed a license and obtained a unique identifier to act as a mortgage loan originator in 2009 pursuant to this Chapter, shall thereafter submit an annual license renewal application on or before December thirty-first of each year in a manner and form prescribed by the commissioner.

(3) An annual renewal application shall be accompanied by the required annual license renewal fee pursuant to R.S. 6:1088.1. An annual license renewal application submitted after December thirty-first and before March first of the following year shall be charged an annual license renewal late fee of two hundred dollars for residential mortgage lenders, brokers, and servicers, and fifty dollars for mortgage loan originators, in addition to the annual license renewal fee.

B. (1) An annual license renewal application which is timely submitted on or before the December thirty-first license expiration date shall remain in force and effect until such application is approved or rejected by the commissioner. Nothing in this Section shall preclude the commissioner from implementing any administrative or enforcement action authorized by this

Title for violations of this Chapter or for material misrepresentation which may have occurred prior to the renewal date of a license.

(2) Licenses for which renewal applications are submitted to the NMLS&R after December thirty-first shall be deemed to have expired effective January first, unless the licensee after December thirty-first and before March first of the following year, satisfies all of the following:

(a) Submits a request for a late filing of the annual license renewal application.

(b) Pays the annual license renewal application fee and the annual license renewal late fee provided for in Subsection A of this Section.

(c) Meets the requirements for license renewal provided for in Paragraphs (C)(1) or (C)(2) of this Section, as applicable.

C. (1) The commissioner shall not renew a residential mortgage originator license for which an application for license renewal is submitted for the year 2010, and shall not renew any residential mortgage originator license for which an application for license renewal is submitted for any year thereafter, unless the commissioner finds at a minimum:

(a) The applicant for renewal of a residential mortgage loan originator license continues to meet all requirements to obtain a license, including all requirements of R.S. 6:1088.

(b) The applicant for renewal of a residential mortgage loan originator license satisfies:

(i) The annual continuing education requirements of this Part.

(ii) The applicant is in compliance with all final or uncontested orders of, or consent agreements with the commissioner including, but not limited to, the payment of fees, penalties, or refunds.

(2) The commissioner shall not renew a residential mortgage broker, lender, or servicer license for which an application for license renewal is submitted for the year 2010, and shall not renew any residential mortgage lender or broker license for which an application for license renewal is submitted for any year thereafter, unless the commissioner finds at a minimum:

(a) The applicant for renewal of a residential mortgage lender or broker license continues to meet all requirements to obtain a license, including all requirements of R.S. 6:1088.

(b) The applicant for renewal of a residential mortgage lender, broker, or servicer license is in compliance with all final or uncontested orders of, and consent agreements with the commissioner, including but not limited to, the payment of all fees, penalties, or refunds.

D. (1) The license of a mortgage loan originator failing to satisfy the minimum standards for annual license renewal in Paragraph (C)(1) of this Section shall expire on December thirty-first.

(2) The license of a mortgage loan broker, lender, or servicer failing to satisfy the minimum standards for annual license renewal in Paragraph (C)(2) of this Section shall expire on December thirty-first.



#### **§ 1088.4. Information reporting**

Notwithstanding any other provision of law to the contrary, except for R.S. 6:103(B)(16), R.S. 6:103(J), and R.S. 6:1088.1, the commissioner shall furnish to the NMLS&R the following:

(1) Information as required by the P.L. 110-289, as amended, including but not limited to, the employment history of and publicly adjudicated disciplinary and enforcement actions and consumer complaints against mortgage loan originators.

(2) Information regarding publicly adjudicated disciplinary and enforcement actions and consumer complaints against mortgage loan brokers or mortgage lenders engaging in activities subject to this Chapter.

(3) Regularly report violations of this Chapter, as well as enforcement actions, and other relevant information to the NMLS&R.

#### **§ 1089. Name or location changes and closures; fees**

A. (1) No residential mortgage lender, originator, or servicer shall conduct the residential mortgage lending activities provided for in this Chapter under any name other than the one stated in its current record of information in the licensing system.

(2) A residential mortgage lender or servicer shall notify the commissioner of a change in the location or name of the business or the addition of offices by submitting such information to the licensing system prior to the change. A notice of change of location or name or addition of offices shall be accompanied by a filing fee of one hundred dollars.

(3) A residential mortgage lender or servicer shall notify the commissioner of the closing of any office by submitting such information to the licensing system and within thirty days of such closure.

B. (1) Whenever the employment of an originator changes, whether by the originator's action or otherwise, the originator shall give notice of the change of employment to the commissioner by submitting such information to the licensing system within thirty days of such change. The notice shall be accompanied by a filing fee of fifty dollars.

(2) Whenever the employment of an originator employed by a mortgage broker or mortgage lender changes, whether by the originator's change of employment or otherwise, the employer, unless exempted from the provisions of this Part, shall give notice of the change in employment to the commissioner by submitting such information to the licensing system within thirty days of the change.

(3) Failure to notify the commissioner through the NMLS&R within the prescribed time as required by this Section shall result in a one hundred dollar late notification fee.

## § 1090. Restrictions

A. No license issued pursuant to this Chapter shall be sold or otherwise transferred.

B. (1) No person shall acquire or control a license to make, service, or broker residential mortgage loans through the acquisition or control of fifty-one percent or more of the ownership interest in a licensee without first having obtained written approval from the commissioner, pursuant to an application for a change of control in ownership of the licensee, filed in the manner and on a form prescribed by the commissioner and accompanied by a fee of three hundred dollars. Any person who acquires controlling interest in a licensee without first having filed an application for change of control with the commissioner shall be deemed to be operating without proper authority under this Chapter and is subject to the penalties of R.S. 6:1092(C).

(2) For the purposes of this Section, a person acquires or controls the licensee when at least one of the following conditions exists:

(a) The person, directly or acting through one or more other persons, owns, controls, or has the power to vote any class of stock of the corporation.

(b) The person controls in any manner the election of a majority of the directors of the corporation.

(c) The commissioner determines, after notice and an opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the management or the policies of the licensee.

(3) When the licensee is a limited liability company or a limited liability partnership, the licensee is acquired or controlled if one of the following occurs:

(a) There is a change of managers or general partners.

(b) An existing manager or general partner acquires or controls the licensee as provided in Paragraph (2) of this Subsection.

(c) The commissioner determines that there has been a significant change in the membership or partnership interests, including but not limited to a change in ownership or control, directly or indirectly affecting twenty-five percent or more of the total interest of the licensee.

(4) A corporation that is a licensee shall notify the commissioner within sixty days of a stockholder becoming a principal stockholder.

C. No person may act as an originator in a residential loan transaction unless such person is employed by a licensed mortgage broker or mortgage lender, or by a person exempt from the provisions of this Part.

D. A mortgage broker shall broker a residential mortgage loan only to a mortgage lender licensed pursuant to this Chapter, or to a mortgage lender exempt from the provisions of this Part.

E. Any person licensed under this Chapter shall engage in residential mortgage lending activities only through a natural person who is licensed as a mortgage loan originator or who is exempt from the provisions of this Part.

F. A licensed residential mortgage lender or broker shall enter into a residential mortgage lending transaction only with a person who is in compliance with the licensing provisions of this Chapter as a mortgage broker, mortgage lender, or mortgage loan originator.

G. No residential mortgage lender is permitted to operate a "Net Branch" in this state except as permitted by rules promulgated by the commissioner.

H. No person who has been denied a license or had a license revoked and has failed to request an administrative hearing pursuant to R.S. 6:1092(A), or whose revocation was affirmed in an administrative hearing, may be employed as a loan processor of residential mortgage loans or hold a position which is responsible for the operation of the principal place of business or a branch of any residential mortgage lender licensed under this Chapter.

I. No person licensed pursuant to the Residential Mortgage Lending Act, R.S. 6:1081 et seq., shall engage in or be financially compensated for any loan transaction in which such person, for a fee, commission, or other valuable consideration, is acting as a licensee under the Louisiana Real Estate License Law, R.S. 37:1430 et seq., in connection with the same residential loan transaction.

### **§ 1091. Recordkeeping and retention; examinations; investigation of complaints; reports of conditions**

A. (1) Each person required to be licensed under this Chapter shall maintain in its offices such books, records, and accounts of its residential mortgage lending activities as the commissioner may reasonably require in order to determine whether such person is complying with the provisions of this Chapter and the rules and regulations promulgated under the provisions of this Chapter. Required records may be maintained in any electronic format consistent with the person's ordinary business practices unless the person receives specific written instructions from the commissioner to the contrary. Such books, records, and accounts shall be maintained separate and apart from any other business in which the person is involved and shall be kept at the location in the state at which the residential mortgage lending activity occurred or at the person's principal office unless otherwise permitted in writing by the commissioner. Records must be made available for review or examination at a nonresidential location approved by the commissioner.

(2) The commissioner either in person or through an employee appointed by him shall examine the books, records, and accounts of all licensed residential mortgage lenders at least once every three years on an examination schedule which focuses on appropriate risk management and concentrations of consumer complaints and is consonant with the resources of the office and in accordance with good examination practices. The commissioner shall include the dates of each licensed residential mortgage lender's last two examinations beginning with examinations conducted after January 1, 2008, which information shall be updated quarterly, with the licensee's identifying information on the list of active residential mortgage lenders maintained by the office of financial institutions and accessible by the general public. The commissioner may also examine any formerly licensed person who is engaged in the collection or enforcement of mortgage loans or brokerage agreements. Nothing in this Subsection shall limit the authority of the commissioner to examine any licensed or formerly licensed person as frequently as he deems necessary to protect the public interest.

(3) If the books and records of any person described in this Subsection are located outside of the state, he shall make them available to the commissioner at a location within this state convenient

to the commissioner or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on his behalf.

(4) The commissioner shall assess an examination fee in an amount not to exceed four hundred dollars per location examined. If the examination fee is not paid within thirty days of its assessment, the person examined shall be subject to an administrative penalty of not more than fifty dollars for each day it is delinquent.

B. If the commissioner receives a written complaint pertaining to the residential mortgage activities of a person exempt from the provisions of this Part or this Chapter, or exempt from licensure pursuant to the provisions of R.S. 6:1087, the commissioner may refer the complaint to the exempted person for comment or response or to the appropriate federal or state regulatory, licensing, supervisory, or auditing agency or body.

C. In addition to any authority allowed under this Title, the commissioner shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Chapter, the commissioner shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(a) Criminal, civil and administrative history information.

(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(c) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(2) For the purposes of investigating violations or complaints arising under this Chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee, individual, or person subject to this Chapter, as often as necessary in order to carry out the purposes of this Chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(3) Each person subject to this Chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person subject to this Chapter. The commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this Chapter concerning their business.

(4) Each person subject to this Chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this Section, including but not limited to information lists and data concerning loan transactions in a format prescribed by the commissioner.

(5) In making any examination or investigation authorized by this Chapter, the commissioner may control access to any documents and records of the person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the person have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Chapter, the person who is the owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) In order to carry out the purposes of this Section, the commissioner may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.

(b) Enter into agreements or relationships with other government officials or regulatory associations by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this Section.

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate each person subject to this Chapter.

(d) Accept and rely on examination or investigation reports made by other government officials, within or outside this state.

(7) The authority of this Section shall remain in effect, whether such person subject to this Chapter acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(8) No licensee, individual, or person subject to investigation or examination under this Section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

D. Each licensee shall submit to the NMLS&R reports of condition which shall be in such form and contain such information as the NMLS&R may require.

## **§ 1092. Suspension and revocation of licensure; commissioner's interpretations; prohibitions**

A. After notice and an opportunity to be heard as provided in the Administrative Procedure Act,<sup>1</sup> the commissioner may suspend or revoke the license of any person licensed pursuant to this Chapter who:

- (1) Violates any of the provisions of this Chapter or any rule or regulation promulgated or any order, including, but not limited to, a cease and desist order or subpoena, issued pursuant to this Chapter.
- (2) Violates any provision of a voluntary consent or compliance agreement which has been entered into with the commissioner.
- (3) Has knowingly provided or caused to be provided to the commissioner any false or fraudulent misrepresentation of material fact or any false or fraudulent financial statement, or has suppressed or withheld from the commissioner any information which if submitted by him would have resulted in denial of the license application.
- (4) Refuses to permit an examination by the commissioner of his books and affairs, or has refused or failed within a reasonable time to furnish any information or make any report that may be required by the commissioner under the provisions of this Chapter.
- (5) Fails to maintain records as required by the commissioner after being given written notice to the last address of record and thirty days within which to correct the failure. The commissioner may grant, on good cause shown, up to two thirty-day extensions within which to correct the recordkeeping violations.
- (6) Continues in office any individual with power to direct the management or policies of a person regulated by this Chapter, including but not limited to any officer, director, or manager, if such individual is convicted of, pleads guilty to, or is found guilty after a plea of nolo contendere of any felony and has been adjudicated guilty in any state, federal, foreign, or military court.
- (7) Violates any provision of a regulatory or prohibitory statute and has been found to have violated such statute by the governmental agency responsible for determining such violations.
- (8) Misrepresents material facts or makes false promises likely to influence, persuade, or induce an applicant into making a residential mortgage loan or a mortgagor into taking a mortgage loan, or pursues a course of misrepresentation through agents or otherwise.
- (9) Misrepresents or conceals material facts, terms, or conditions of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor.
- (10) Knowingly engages in any transaction, practice, or course of business which perpetrates a fraud upon any person in connection with the making, purchasing, sale, or brokering of any mortgage loan.
- (11) Fails to account for or deliver to any person any personal property obtained in connection with a residential mortgage loan, including but not limited to money, funds, deposits, checks, drafts, mortgages, or other documents or things of value, which has come into his hands and which is not his property, or which he is not entitled by law to retain.
- (12) Fails to disburse, without just cause, any funds in accordance with any agreement connected with a residential mortgage loan.
- (13) Fails to pay any fee or assessment imposed by this Chapter or by any rule or regulation promulgated in accordance with this Chapter.

(14) Violates the written restrictions or conditions under which the license was issued.

(15) Fails, after notice and without lawful excuse, to obey any order or subpoena issued by the commissioner.

(16) The commissioner discovers any fact or condition currently exists which, if it had existed at the time of the original application for licensure, would have warranted the denial of the application.

(17) Repealed by Acts 2009, No. 522, §3, eff. July 31, 2009.

B. (1) Notwithstanding any other law to the contrary, and in addition to any other authority conferred upon the commissioner by any other provision of law, the commissioner may upon discovery order an immediate suspension of the license of any person licensed pursuant to this Chapter who:

(a) Fails to maintain a surety bond in any manner as provided for by this Chapter.

(b) Commits serious violations of this Chapter such that, in the opinion of the commissioner, the public safety and welfare demand that emergency action be taken.

(c) Submits a payment of any fee for any application, notification, examination, investigation, late fee, or penalty which is returned, declined, denied, or otherwise not paid in full for any reason.

(d) Is convicted of a felony that would have prohibited the issuance or renewal of the license.

(e) Has his license to act as a residential mortgage broker, residential mortgage lender, mortgage servicer or residential mortgage loan originator suspended or revoked in this or another jurisdiction.

(2) A person whose license is suspended under this Subsection shall have thirty days from the date of the order to request a hearing in accordance with the Administrative Procedure Act. Failure to timely request a hearing shall constitute a waiver of all hearing rights regarding the suspension.

C. In addition to any other authority conferred upon the commissioner by this Chapter or this Title, the commissioner may issue cease and desist orders, order refunds of any unauthorized portion of any fee, or charge any person collects in violation of this Chapter, and may impose a civil money penalty not exceeding one thousand dollars upon any person who is found in an administrative proceeding to have violated any of the provisions of this Chapter or any rule or regulation promulgated in accordance with this Chapter. Each separate violation shall subject such person to such civil money penalty and each day such person acts without complying with the provisions of this Chapter, or the rules or regulations promulgated in accordance with this Chapter, shall constitute a separate violation.

D. The violations listed in this Subsection are nonexclusive, and are in addition to and exist independent of, any other violations set forth in other provisions of this Chapter. Failure to comply with any provisions set forth herein may serve as a basis for any enforcement or other

action accorded the commissioner under this Title. It shall be a violation of this Chapter for a person or individual engaged in residential mortgage lending activity subject to this Chapter to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers, lenders, or any person, when such person or individual knew or should have known that such scheme, device, or artifice was defrauding or misleading.
- (2) Engage in any unfair or deceptive practice toward any person.
- (3) Obtain property by fraud or misrepresentation.
- (4) With the intent to defraud, solicit or enter into a contract with a consumer providing for payment of an unlawful fee or commission to a person subject to this Chapter even though no loan is actually obtained for the consumer.
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms when the person or individual knew or should have known that such terms are not actually available at the time of soliciting, advertising, or contracting.
- (6) Conduct any business covered by this Chapter without holding a valid license as required under this Chapter, or knowingly assist or aid and abet any person in the conduct of business under this Chapter without a valid license as required under this Chapter.
- (7) As determined by the commissioner, structure a residential loan transaction in such a manner as to circumvent the provisions of this Chapter.
- (8) Fail to comply with this Chapter or rules or regulations promulgated under this Chapter, or fail to comply with any other state or federal law, including the rules and regulations issued thereunder, applicable to any residential mortgage lending activity.
- (9) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan when such person or individual knew or should have known that such statement or representation was false or deceptive, or engage in bait and switch advertising.
- (10) Negligently make any false statement, or knowingly and willfully make any omission of material fact, in connection with any information or reports filed with a governmental agency or the NMLS&R, or in connection with any investigation conducted by the commissioner or any other governmental agency.
- (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
- (12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this Chapter.
- (13) Engage in loan processing or underwriting activities as an independent contractor without obtaining a license to act as a residential mortgage loan originator.



(14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

(15) Represent to the public through advertising or other means of communicating or providing information including the use of business cards, stationary brochures, signs, rate lists, or other promotional items, that such an individual can or will perform any activities of a mortgage loan originator, while such individual engages in activities solely as a loan processor or underwriter.

E. The commissioner may report violations to other state and federal regulators of mortgage lending activities, the NMLS&R, federal law enforcement agencies, the attorney general, or to the district attorney of the appropriate parish, who may institute such proceedings as they deem appropriate.

F. No act done or omitted in conformity with any advisory opinion or interpretation issued by the office of financial institutions at the time of the act or omission or subsequent to the act or omission shall constitute a violation of this Chapter, notwithstanding that after such act or omission has occurred, such advisory opinion or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Advisory opinions and interpretations of the office of financial institutions shall not be considered rules requiring compliance with the rulemaking process of the Louisiana Administrative Procedure Act. The commissioner and the employees of the office of financial institutions shall have no liability to any person with respect to an advisory opinion or interpretation issued in connection with this Chapter.

G. Any person who acts as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator without complying with the licensing provisions of this Chapter shall be subject to forfeiture of the compensation attributable to and received by the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator in connection with residential mortgage lending activity occurring on or after August 15, 2001; provided that the forfeiture of such compensation by the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall not impair the validity of the note and mortgage.

H. All of the grounds for license suspension or revocation listed in Subsection A of this Section are violations of this Chapter and may serve as the basis for any other enforcement action provided to the commissioner by this Title.

I. The commissioner may share information about any person who is licensed or required to be licensed pursuant to this Chapter with any state or federal agency having concurrent jurisdiction over such person with the Office of Financial Institutions.

J. Repealed by Acts 2007, No. 36, §2, eff. June 18, 2007; and Acts 2007, No. 376, §2, eff. July 10, 2007.

K. Any residential mortgage lender, broker, or servicer whose license under this Chapter has been revoked for any reason may not reapply for a license until at least five years have elapsed from the date of the order of revocation, unless the commissioner, in his sole discretion, prescribes an earlier or later date. For purposes of this Subsection, the order shall be considered to be the commissioner's notification of revocation of the license. For the purposes of this Subsection, mortgage lender, mortgage broker, or mortgage servicer shall include the licensee,

owners of ten percent or more, and its members if the licensee is a limited liability company, its partners if the licensee is a partnership, its officers and directors, if the licensee is a corporation, and any other person determined by the commissioner, in his sole discretion, to be closely related to the mortgage lender, broker or servicer.

<sup>1</sup>LSA-R.S. 49:950 et seq.

### **§ 1092.1 Costs of appeal**

Subject to the provisions of R.S. 13:4521 and 4581, all estimated costs of appeal, including those involved in the preparation of the administrative record of appeal, taken by a person in connection with an adverse ruling of an administrative law judge in connection with a hearing held pursuant to this Chapter and the Administrative Procedure Act, <sup>1</sup> shall be paid by that person within sixty days of the filing of the petition for appeal in the district court. Failure to pay such estimated costs within the time prescribed shall result in the appeal being dismissed with prejudice and without the necessity of any further action being taken by any party.

<sup>1</sup>LSA-R.S. 49:950 et seq.

### **§ 1092.2 Validity of judgment; execution**

Any final and definitive decision of an administrative law judge or, in the case such decision is appealed, a final judgment of an appellate court, issued in connection with any hearing held pursuant to this Chapter and the Administrative Procedure Act<sup>1</sup> shall be considered a valid and final judgment that may be made executory in accordance with the Code of Civil Procedure.

<sup>1</sup>LSA-R.S. 49:950 et seq.

**§ 1093.** Repealed by Acts 2010, No. 743, § 22(B), eff. July 1, 2010

### **§ 1094. Professional education required for licensure; continuing education**

A. (1) In order to meet the pre-licensing education requirements pursuant to R.S. 6:1088, a person shall complete at least twenty hours of education approved in accordance with this Section, which shall include all of the following minimum requirements:

(a) Three hours of federal law and regulations.

(b) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(c) Two hours of training related to lending standards for the non-traditional mortgage marketplace.

(d) Repealed by Acts 2010, No. 36, § 2.

(2) For purposes of Paragraph (1) of this Subsection, pre-licensing education courses shall be reviewed and approved by the NMLS&R, and shall include review and approval of course providers; provided however, that until such time as the commissioner determines that the pre-licensing education courses and course providers referred to in this Paragraph are available to satisfy the requirements of Paragraph (1) of this Subsection, the requirements may be met by the completion prior to December 31, 2010, of any pre-licensing education courses or continuing education courses approved by the commissioner in accordance with this Part prior to that date. Such courses approved by the commissioner shall be eligible for inclusion in the total number of

hours of pre-licensing education any person is required to complete in order to obtain, or to renew a mortgage loan originator license for any license year beginning on, or prior, to January 1, 2011.

(3) Nothing in this Section shall preclude any pre-licensing education course, as approved by the NMLS&R, that is provided by the employer of an applicant or an entity which is affiliated with the employer by an agency contract, or by any subsidiary or affiliate of such employer or entity.

(4) Pre-licensing education may be offered by any means approved by the NMLS&R.

(5) Unless otherwise provided by a rule issued by the commissioner, a person having successfully completed the pre-licensing education courses approved by the NMLS&R for any other state shall be accepted as credit towards completion of pre-licensing education course requirements in this state.

(6) The pre-licensing education requirements shall apply to all applications for a mortgage loan originator license submitted after July 31, 2009, and to all applications for renewal of a mortgage loan originator license submitted for the 2010 licensing year; provided however that, and notwithstanding any other law to the contrary, any person licensed as a mortgage loan originator on July 30, 2009, shall not be required to meet the minimum requirements of twenty hours of pre-licensing education provided for in this Part, until such person timely submits an application to renew a mortgage loan originator license for the year 2011.

B. (1) In order to meet the annual continuing education requirements pursuant to R.S. 6:1088.3, a licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with Paragraph (2) of this Subsection, which shall include all of the following minimum requirements:

(a) Three hours of federal laws and regulations.

(b) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(d) Repealed by Acts 2010, No. 36, § 2.

(2) For purposes of Paragraph (1) of this Subsection, continuing education courses shall be reviewed, and approved by the NMLS&R and shall include review and approval of the course provider; provided however, until such time as the commissioner determines that the continuing education courses and course providers referred to in this Paragraph are available to satisfy the requirements of Paragraph (1) of this Subsection, the requirements may be met by completion of any continuing education courses approved by the commissioner in accordance with this Part. Such courses approved by the commissioner shall be eligible for inclusion in the total number of hours of continuing education any person is required to complete in order to renew a mortgage loan originator license for any license year beginning on or prior to January 1, 2011.

(3) Nothing in this Section shall preclude any education course, as approved by the NMLS&R, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be provided by any other means approved by the NMLS&R.

(5) Except as provided in Paragraph (6) of this Subsection, a licensed mortgage loan originator:

(a) May only receive credit for a continuing education course in the year in which the course is taken.

(b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(c) May receive credit for being an instructor of an approved continuing education course, at the rate of two hours of credit for every one hour of instruction, towards the licensed mortgage loan originator's own annual continuing education requirements for the next licensing year after providing such instruction.

(6) The provisions of Subparagraphs (5) (a) and (b) of this Subsection shall not apply to:

(a) Courses approved by the commissioner for inclusion in the total number of hours of pre-licensing education courses required to satisfy the pre-licensing education requirements for any person required to meet the minimum pre-licensing education requirements to obtain a mortgage originator license, or to obtain renewal of a mortgage loan originator license for any license year beginning prior to January 1, 2011.

(b) Courses approved by the commissioner for inclusion in the total number of hours of continuing education courses required to satisfy the continuing education requirements for any person required to meet the minimum continuing education requirements to obtain renewal of a mortgage loan originator license for any license year beginning after the effective date of this Act and prior to January 1, 2011.

(7) A person having successfully completed the continuing education requirements approved by the NMLS&R in this Subsection for any other state shall be accepted as credit towards completion of the continuing education requirements of this Chapter.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

C. to E. Repealed by Acts 2010, No. 36, § 2.

F. No person shall hold himself out as being or advertise as a certified mortgage broker, mortgage lender, or originator unless such person has completed the educational requirements established in this Section.

G. Repealed by Acts 2010, No. 36, § 2.

### **§ 1094.1. Testing of loan originators**

A. In order to meet the written test requirement pursuant to R.S. 6:1088, an individual shall pass, in accordance with the standards established under this Section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the NMLS&R.

B. A written test shall not be treated as a qualified written test for purposes of this Section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

(1) Ethics.

(2) Federal law and regulations pertaining to mortgage origination.

(3) Louisiana law and regulations pertaining to mortgage origination.

(4) Federal and Louisiana law and regulations, including instruction on fraud, consumer protection, the non-traditional mortgage marketplace, and fair lending issues.

C. Nothing in this Section shall prohibit a test provider approved by the NMLS&R from providing a test at the location of the employer of the applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

D. (1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(2) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(3) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(4) A licensed mortgage originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

## **PART III. RESIDENTIAL MORTGAGE LOANS**

### **§ 1095. Scope**

A. (1) The provisions of this Part shall govern and control the rates, fees, charges, and disclosures applicable to residential mortgage loans.

(2) Repealed by Acts 2001, No. 617, § 3, eff. June 22, 2001.

B. All fees and charges authorized under this Part, whether or not such fees and charges constitute or are considered to be loan finance charges, shall be deemed to be material to the determination of the interest rate for purposes of exportation to borrowers residing in other states under the most favored lender doctrine of federal law.

C. As a general rule of construction, comparable rules, definitions, and principles under the Federal Real Estate Settlement Procedures Act and Regulation X of the office of the secretary of the Department of Housing and Urban Development, the Federal Truth in Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve System may be looked to for guidance in further interpreting terms and concepts that are not otherwise defined or specified in the provisions of this Part. Fees and charges that are not classified as or considered as finance charges under the Federal Truth in Lending Act and Regulation Z are not considered to be loan finance charges for the purposes of this Part.

D. This Part shall not prohibit the imposition of fees and charges which are otherwise permissible under R.S. 6:548.

### **§ 1096. Residential mortgage loans**

A. Any consumer who has contracted for a federally related mortgage loan may agree to pay fees and interest in excess of the maximum amounts authorized by the laws of this state and as such shall be prohibited from asserting a claim or defense of usury or of the taking of interest in excess of the maximum rate of conventional interest. Any person signing as a co-maker, guarantor, or endorser for such consumer shall also be prohibited from asserting any such claim or defense.

B. The parties to a residential mortgage loan, other than a federally related mortgage loan, may agree to the payment of broker and other fees and interest in connection with a closed-end credit transaction, or finance charges calculated as a monthly periodic rate over the course of a year in connection with an open-end credit transaction otherwise subject to the Louisiana Consumer Credit Law, but made contractually subject to the provisions of this Chapter, as those terms are defined in federal Regulation Z, 12 CFR Section 226.1 et seq., up to an annual percentage rate as computed pursuant to 12 CFR Section 226.22 for closed-end credit and 12 CFR Section 226.14 (c) for open-end credit in an amount not to exceed the greater of either twenty-one percent or fifteen percentage points above the Federal Reserve Board of Governors approved "Discount Rate" published semi-annually in the Wall Street Journal on the first business day in January and July in the year the loan was originated, consummated, or renewed.

C. Unless otherwise provided by federal law, variable rate, or adjustable rate mortgage loans shall be governed by the provisions of R.S. 9:3504(D).

D. The general prohibition against interest upon accrued interest shall not apply to residential mortgage loans governed by this Part.

E. (1) In the absence of federal law or rules and regulations of federal agencies, a consumer may prepay in full the unpaid balance of his residential mortgage loan at any time.

(2) A mortgage lender may contract for and receive a prepayment penalty in an amount not to exceed:

(a) Five percent of the unpaid principal balance if the loan is prepaid in full during the first year of its term.

(b) Four percent of the unpaid principal balance if the loan is prepaid in full during the second year of its term.

(c) Three percent of the unpaid principal balance if the loan is prepaid in full during the third year of its term.

(d) Two percent of the unpaid principal balance if the loan is prepaid in full during the fourth year of its term.

(e) One percent of the unpaid principal balance if the loan is prepaid in full during the fifth year of its term.

(3) Notwithstanding any other provision of law to the contrary, no prepayment penalty or similar fee or charge shall be due, assessed, charged, collected, paid, held in escrow, or contracted to be paid if all or part of a prepayment of all or part of an outstanding loan balance is made from proceeds paid in full or partial satisfaction of a claim or claims made under a policy or policies of insurance insuring against casualty, flood, or other loss or damage to property securing the loan being prepaid in connection with a gubernatorially declared disaster.

F. Agreements to compensate mortgage brokers through yield spread premiums for goods, facilities, and services actually provided in connection with a residential loan transaction shall be valid and enforceable.

G. (1) No mortgage broker shall assess, contract for, or receive any type of fee, interest, or other charge in advance, except for expense deposits from a potential borrower for the procurement of a loan. An advance expense deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, credit reports performed by an independent person and required by the originating lender for the evaluation of the potential borrower's loan application, or the actual cost of any charge of no more than twenty-five dollars assessed to a mortgage broker by Fannie Mae for "Desktop Underwriter" or Freddie Mac for "Loan Prospector". Any portion of an advance expense deposit which exceeds the actual cost of any appraisal, title search, credit reports, or charge assessed to a mortgage broker by Fannie Mae for "Desktop Underwriter" or Freddie Mac for "Loan Prospector" shall be refunded to the borrower or credited to the borrower's account at the time of the closing of the loan.

(2) No mortgage lender shall assess, contract for, or receive any advance expense deposit for third party settlement services in advance that exceeds the good faith estimate of the actual cost of the settlement service. Any portion of an advance expense deposit which exceeds the actual cost

of a third party settlement service shall be refunded to the borrower or credited to the borrower's account at the time of the closing of the loan.

(3)(a) No mortgage lender shall finance or include in the original principal balance of a residential mortgage loan of more than fifty thousand dollars the premium amount for any single premium credit life, dismemberment, health and accident, mortgage life and disability, involuntary unemployment, or debt cancellation insurance sold in connection with a residential mortgage loan transaction unless that portion of original principal balance attributable to such insurance premium is scheduled to be fully amortized no later than the coverage expiration date of such insurance product. Nothing in this Paragraph shall prohibit a lender from the financing of private mortgage insurance paid on a single premium basis in connection with a residential mortgage loan transaction.

(b)(i) Notwithstanding Subparagraph (a) of this Paragraph, it shall not be a violation of this Paragraph for a mortgage lender to finance or include in the original principal balance of a residential mortgage loan the premium amount for any single premium credit life, dismemberment, health and accident, mortgage life and disability, involuntary unemployment, or debt cancellation insurance sold in connection with a residential mortgage loan transaction, provided such premium amount was financed or included in the original principal balance of a residential mortgage loan during the period beginning on August 15, 2006, and ending on August 14, 2007.

(ii) Notwithstanding Subparagraph (a) of this Paragraph, no residential mortgage loan executed during the period beginning on August 15, 2006, and ending on August 14, 2007, shall be deemed invalid or unenforceable due to the inclusion of a premium amount for any single premium credit life, dismemberment, health and accident, mortgage life and disability, involuntary unemployment, collateral protection, or debt cancellation insurance financed in connection with and made a part of the principal balance of such residential mortgage loan.

H. (1) A residential mortgage lender shall provide the consumer, within five days of the date a written request is received from the consumer, with the amount necessary to prepay the account in full, and if the amount disclosed includes an amount which is required to be refunded, the amount of such refund.

(2) A consumer shall be entitled to receive one such disclosure of information statement each year without charge. Thereafter, the extender of credit may impose a reasonable fee to cover the cost of providing an additional disclosure statement; however, the charge imposed must be disclosed to the consumer before furnishing such disclosure statement.

I. (1) The person acting as originator in a residential loan transaction shall sign the original mortgage loan application and if applicable, shall include in the original mortgage loan application the unique identifier assigned to that person.

(2) An originator may only originate residential mortgage loans for one employer.

J. (1) It is the purpose of this Subsection to provide for parity among persons engaging in residential mortgage loan transactions in this state by permitting persons licensed pursuant to this Chapter to charge a reasonable application fee in connection with a residential loan transaction if, prior to collecting the fee, the licensee provides the consumer a written disclosure stating the amount of the fee and informing the consumer that the application fee shall be refundable at any



time prior to the licensee ordering any service required by the lender to evaluate the potential borrower's loan application. In the event that the lender is unable to approve the loan, after all requested documentation has been provided by the borrower to the lender, the application fee shall be refunded to the borrower.

(2) Notwithstanding the provisions of this Section or any other law to the contrary, persons licensed to engage in residential mortgage loan transactions pursuant to this Chapter may charge a reasonable application fee, not to exceed five hundred dollars, in connection with a residential mortgage loan. The application fee may be charged only once in connection with a single loan to one borrower. The application fee shall not be considered as an advance expense deposit as provided for herein, or as interest or loan finance charge, nor shall it be included in the calculation of interest.

### **§ 1097. Residential mortgage loan fees and charges; applicability of the Louisiana Consumer Credit Law**

A. Notwithstanding any other law to the contrary, including but not limited to R.S. 9:3500, in addition to those fees, charges, costs, and expenses not considered interest or defined as finance charges under federal Regulation Z, the parties to a federally related mortgage loan may agree to the payment of any fees, charges, costs, and expenses, and the amounts thereof, including but not limited to the types of fees, charges, costs, and expenses listed in Subsection B of this Section, if the fees, charges, costs, and expenses, and the amounts thereof, or the methods for fixing such, are provided in a writing signed by the consumer.

B. The parties to a consumer loan, secured by a mortgage on residential immovable property, which is made contractually subject to the provisions of this Chapter, may agree to pay the following fees, charges, costs, and expenses:

(1) Charges for the prepayment of the loan or any installment or part of the loan prior to the time fixed for payment.

(2) Charges, in the amount of five percent of the unpaid amount, assessed for nonpayment of the loan or any installment or part of the loan after the loan or installment of principal or interest has become delinquent and is not timely paid.

(3) Costs of collection and reasonable attorney fees not in excess of twenty-five percent of the unpaid debt after default, when the debt has been referred to an attorney for collection.

(4) Fees, taxes, charges, and other expenses incurred in making the loan which are collected from or paid by or on behalf of the borrower, if such fees, taxes, charges, or other expenses are actually paid to or payable to persons other than the lender or the person making the loan or any employee of such lender or person.

(5) Charges or premiums for credit life insurance actually written on the life of the borrower or endorser in an amount not to exceed the total sum payable under the residential mortgage loan, including all interest, fees, costs, and charges.

(6) N.S.F. check charges in an amount not to exceed the greater of five percent of the amount of the check or electronic payment, or twenty-five dollars, assessed if the payment is returned or otherwise dishonored. For the purposes of this Section and any contract entered into pursuant to

this Section, the phrases “due to insufficient credit or funds” or “N.S.F. check charges” means a check or electronic payment returned unpaid for any reason.

(7) Other fees, charges, costs, and expenses not defined as finance charges under federal Regulation Z, if the fees, charges, costs, and expenses, or the methods for fixing such, are provided in a writing signed by the consumer.

C. Consumer loans otherwise subject to the provisions of this Chapter may be made contractually subject to the Louisiana Consumer Credit Law, R.S. 9:3510 et seq., by specifically stating that the loan is subject to the Louisiana Consumer Credit Law, R.S. 9:3510 et seq.

### **§ 1098. Residential mortgage loan brokerage contracts**

A. Each residential mortgage loan brokerage contract shall be in writing and signed by all contracting parties. The mortgage broker shall retain a signed copy of the residential mortgage loan brokerage contract in the customer’s file.

B. The mortgage broker must provide the prospective borrower with a written “Mortgage Loan Origination Agreement” no later than three days after the initial loan application date. The written agreement shall describe the nature of the mortgage broker’s relationship with the borrower and the manner in which the mortgage broker is compensated for his services. Such disclosures may be incorporated into the brokerage contract or provided in a separate document.

C. The written disclosures provided to the borrower shall also contain the following information as applicable:

(1) The name, address, telephone number, and if applicable, the unique identifier of the originator.

(2) The name, address, telephone number, and if applicable, the unique identifier of the residential mortgage lender by whom the originator is employed.

D. Failure of the mortgage broker to provide the disclosures required by this Section shall not invalidate any residential mortgage loan entered into by a consumer through the efforts of the mortgage broker, but shall subject the mortgage broker to a refund of any brokerage fees obtained in connection with such residential mortgage loan.

### **§ 1099. Criminal penalties**

A. The commissioner may report the violations of the following provisions to the attorney general or to the district attorney of the appropriate parish, who may institute the proper proceedings.

B. It shall be a misdemeanor for a mortgage broker or lender to knowingly collect advance fees in excess of those provided for in R.S. 6:1096(G), and upon conviction he shall be subject to a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

C. Any person who knowingly provides false or misleading information to the commissioner on an application and such information is material to approval of the application shall be guilty of a

misdemeanor and upon conviction shall be subject to a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

D. Any licensee or exempt registrant who fails to account for or deliver to any person any money, funds, deposits, checks, drafts, mortgages, or other documents, or things of value to the borrower in violation of the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

E. Any licensee who fails to disburse, without just cause, any funds belonging to the borrower shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

F. A lender, broker, originator, or servicer who knowingly operates without a license or while not exempt from the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

## PART IV. REVERSE MORTGAGE LOANS

### § 1101. Reverse mortgages; requirements

A. A reverse mortgage loan shall comply with all of the following requirements:

(1) Prepayment, in whole or in part, shall be permitted without penalty at any time during the term of the reverse mortgage loan. For the purpose of this Section, “penalty” shall not include any fees, payments, or other charges that would have otherwise been due upon the reverse mortgage being due and payable.

(2) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) A reverse mortgage may include costs and fees that are charged by the reverse mortgage lender, or the reverse mortgage lender’s designee, originator, or servicer, including costs and fees charged upon execution of the loan, on a periodic basis, or upon maturity.

(4) If a reverse mortgage loan provides for periodic advances to a borrower, these advances shall not be reduced in amount or number based on any adjustment in the interest rate.

B. A reverse mortgage loan may become due and payable upon one of the following occurrences:

(1) The property securing the loan is sold or title to the home is otherwise transferred.

(2) Any fixed maturity date agreed to by the lender and the borrower occurs.

(3) An event of default specified in the loan documentation occurs.

(C) Repayment of the reverse mortgage loan shall be subject to the following conditions:

(1) Temporary absences from the home not exceeding sixty consecutive days shall not cause the mortgage to become due and payable.

(2) Extended absences from the home exceeding sixty consecutive days, but less than one year, shall not cause the mortgage to become due and payable if the borrower has taken prior action which secures and protects the home in a manner satisfactory to the lender, as specified in the loan documents.

(3) A reverse mortgage lender shall prominently disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

D. The first page of any mortgage securing a reverse mortgage loan shall contain the following statement in ten-point boldface type: “This mortgage secures a reverse mortgage loan.”

E. (1) A reverse mortgage lender shall not:

(a) Enter into any agreement that would obligate the borrower to purchase an annuity, an investment, or long-term care insurance before the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement, if a rescission period applies.

(b) Refer the borrower to anyone for the purchase of an annuity before the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement, if a rescission period applies.

(2) This Section shall not prevent a lender from offering or referring borrowers for title insurance, hazard, flood, or other peril insurance, or other similar products that are customary and normal to a reverse mortgage loan.

### **§ 1102. Counseling**

A. (1) Prior to accepting a final and complete application for a conventional reverse mortgage loan or assessing any fees, a reverse mortgage lender shall provide the prospective borrower with a list of at least five nonprofit counseling agencies that have been approved by the United States Department of Housing and Urban Development for counseling and that offer counseling to residents of the state. The counseling agencies shall meet the standards and requirements established by the United States Department of Housing and Urban Development for reverse mortgage counseling.

(2) In connection with a conventional reverse mortgage loan, a mortgage lender shall not pay any counseling service fees without first informing the prospective borrower in writing that this may create a conflict of interest. A reverse mortgage lender shall disclose to the prospective borrower in writing any other payment arrangements or business affiliations between the lender and a counseling agency.

B. A reverse mortgage lender shall not accept a final and complete application for a conventional reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency described in Subsection A of this Section. The certification shall be signed by the borrower and the agency counselor, and shall include the date of the counseling and the name, address, and telephone number of both the borrower and the counselor. An electronic facsimile copy of the housing counseling certification shall satisfy the requirements of this Section.

### **§ 1103. Commitment and cooling off period**

In connection with a conventional reverse mortgage loan, at least seven calendar days prior to closing a reverse mortgage loan, a reverse mortgage lender shall provide the borrower with a loan term sheet or commitment letter outlining the proposed terms of the loan and informing the borrower that the borrower is not obligated to proceed with the loan transaction.

### **§ 1104. Reverse mortgage lender; duties to elders**

A. In addition to any other obligation under law, any reverse mortgage lender who offers, sells, or arranges the sale of a reverse mortgage to an elder, shall provide the elder with a notice that the

elder should discuss the items outlined in this Section with a loan counselor. For the purpose of this Section, “elder” means any person sixty years of age or older.

B. The reverse mortgage counselor shall discuss the following items with a prospective reverse mortgage borrower:

(1) How unexpected medical or other events causing the borrower to move out of the borrower’s home earlier than anticipated will impact the total annual cost of the reverse mortgage loan.

(2) The extent to which the borrower’s financial needs would be better met by options other than a reverse mortgage loan, including less costly home equity lines of credit, property tax deferral programs, or governmental aid programs.

(3) Whether the borrower intends to use the proceeds of the reverse mortgage loan to purchase an annuity or other financial or insurance product and the consequences of doing so.

(4) The effect of repayment of the reverse mortgage loan on other residents of the domicile that is securing the reverse mortgage loan after all borrowers are deceased or permanently abandon the domicile.

(5) The borrower’s ability to finance routine or catastrophic home repairs, especially if the maintenance is a factor that may determine when the reverse mortgage loan becomes payable.

(6) The impact that the reverse mortgage loan may have on the borrower’s tax obligations and eligibility for government assistance programs, and the effect that losing equity in the domicile securing the reverse mortgage loan will have on the borrower’s estate and heirs.

(7) The ability of the borrower to refinance alternative living accommodations, such as assisted living or long-term care, after the borrower’s equity is depleted.

C. If the prospective reverse mortgage borrower meets with a loan counselor prior to meeting with or discussing a reverse mortgage loan with a lender, the loan counselor shall review the items discussed in Subsection B of this Section with the prospective reverse mortgage borrower and also meet the notice requirement in Subsection A of this Section.

## Notice

**Please note that the excerpted version of this statute contained herein is unofficial and should not be relied on when making legal determinations affecting a person’s rights or obligations without first consulting with competent legal counsel. A complete, but unofficial, copy of the entire Louisiana Revised Statutes is available through the State of Louisiana on the Louisiana Legislature’s website located at [www.legis.state.la.us](http://www.legis.state.la.us).**