

Regular Session, 2008

SENATE BILL NO. 813 (Substitute of Senate Bill No. 587 by Senator Broome)

BY SENATOR BROOME

LOANS. Requires licensure and certification for residential mortgage services. (1/01/09)

1 AN ACT  
2 To amend and reenact R.S. 6:1081, 1082, 1084, 1086(A), 1088(C)(1)(introductory  
3 paragraph), (D), (E)(1) and (3), and (F)(1), 1089(A), 1090(B)(1), 1091(A), (B)(1)  
4 and (C), and 1092(A)(introductory paragraph), and to enact R.S. 6:1083(13) and  
5 (14), relative to residential mortgages; to provide for licensure and certification of  
6 residential mortgage servicers; to provide for purposes; to provide for prohibitions;  
7 to provide for requirements; to provide for application and issuance of licenses; to  
8 provide for changes; to provide for recordkeeping; to provide for suspension and  
9 revocation of licenses; to provide for an effective date; and to provide for related  
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 6:1081, 1082, 1084, 1086(A), 1088(C)(1)(introductory paragraph),  
13 (D), (E)(1) and (3), and (F)(1), 1089(A), 1090(B)(1), 1091(A), (B)(1) and (C), and  
14 1092(A)(introductory paragraph) are hereby amended and reenacted and R.S. 6:1083(13)  
15 and (14) are hereby enacted to read as follows:

16 CHAPTER 14. RESIDENTIAL MORTGAGE  
17 ~~BROKERS AND~~, LENDERS AND SERVICERS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

PART I. GENERAL PROVISIONS

§1081. Short title

This Chapter shall be known and may be cited as the "Residential Mortgage Lending **and Servicing** 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 certification of residential mortgage lenders **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:

\* \* \*

**(13) "Residential mortgage servicer" or "servicer" means a person who engages in the activity of servicing a residential mortgage as defined in this Section.**

**(14) "Service," "servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance of, or the right or obligation to collect or remit for a lender, mortgagee, note owner, noteholder, or for a person's own account, payments, interest, principal, and escrow items such as insurance and taxes for property subject to a residential mortgage loan.**

§1084. Prohibition

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

\* \* \*

1 §1086. Licensure requirement

2 A.(1) Beginning January 1, 2000, no person shall engage in any residential  
3 mortgage lending activity in this state unless such person has first obtained a license  
4 in accordance with the provisions of this Chapter. Any person engaged in residential  
5 mortgage lending activities in this state on January 1, 1999, may continue to be so  
6 engaged and shall by March 1, 2000, have applied for a license and by July 1, 2000,  
7 have obtained a license.

8 **(2) Beginning January 1, 2009, no person shall engage in any residential**  
9 **mortgage servicing activity in this state unless such person has first obtained a**  
10 **license in accordance with the provisions of this Chapter. Any person engaged**  
11 **in residential mortgage servicing activities in this state on January 1, 2008, may**  
12 **continue to be so engaged and shall by March 1, 2009, have applied for a license**  
13 **and by July 1, 2009, shall have obtained a license.**

14 \* \* \*

15 §1088. Application for licensure; issuance of licenses; application and renewal fees

16 \* \* \*

17 C.(1) Each applicant for licensing as a mortgage lender ~~or a~~ mortgage  
18 broker, **servicer**, or ~~both~~ **all three**, shall, at the time of application for licensure or  
19 any renewal of a license, provide evidence of financial responsibility and solvency  
20 in one of the following forms:

21 \* \* \*

22 D. If the applicant has multiple office locations, all such locations may be  
23 covered by a single license by including in the license application the address of each  
24 office operated by the applicant and the name and license number of the individual  
25 licensees engaging in residential mortgage lending **or servicing** activities at that  
26 location. A copy of the applicant's license certificate shall be prominently displayed  
27 at each office at which it does business.

28 E. The application shall be accompanied by the following nonrefundable fees  
29 as determined by and payable to the commissioner:

1 (1) In the case of an application for a license to act as a mortgage lender, a  
2 mortgage broker, a mortgage servicer, or ~~both~~ all three, a license fee in an amount  
3 not to exceed four hundred dollars.

4 \* \* \*

5 (3) An annual license renewal fee for each person licensed as a mortgage  
6 broker ~~or~~ , mortgage lender, or mortgage servicer in an amount not to exceed three  
7 hundred dollars. An annual license renewal application received by the  
8 commissioner postmarked after December first shall be accompanied by a late filing  
9 fee of two hundred dollars, in addition to the annual license renewal fee.

10 \* \* \*

11 F.(1) Each person licensed as a mortgage broker ~~or~~ , mortgage lender, or  
12 mortgage servicer shall file an annual license renewal application on or before  
13 November first of each year on a form prescribed by the commissioner.

14 \* \* \*

15 §1089. Name or location changes and closures; fees

16 A.(1) No residential mortgage lender, servicer, or originator shall conduct  
17 the residential mortgage lending activities provided for in this Chapter under any  
18 name other than the one stated on its license or annual registration statement.

19 (2) A residential mortgage lender or servicer shall notify the commissioner  
20 of a change in the location or name of the business or the addition of offices in  
21 writing prior to the change. A notice of change of location or name or addition of  
22 offices shall be accompanied by a filing fee of one hundred dollars.

23 (3) A residential mortgage lender or servicer shall notify the commissioner  
24 of the closing of any office in writing and within thirty days of such closure.

25 \* \* \*

26 §1090. Restrictions

27 \* \* \*

28 B.(1) No person shall acquire or control a license to make ~~or~~ , broker, or  
29 service residential mortgage loans through the acquisition or control of fifty-one

1 percent or more of the ownership interest in a licensee without first having obtained  
2 written approval from the commissioner, pursuant to an application for a change of  
3 control in ownership of the licensee, filed in the manner and on a form prescribed by  
4 the commissioner and accompanied by a fee of three hundred dollars. Any person  
5 who acquires controlling interest in a licensee without first having filed an  
6 application for change of control with the commissioner shall be deemed to be  
7 operating without proper authority under this Chapter and is subject to the penalties  
8 of R.S. 6:1092(C).

9 \* \* \*

10 §1091. Recordkeeping and retention; examinations; investigation of complaints

11 A. Each residential mortgage lender **or servicer** required to be licensed under  
12 this Chapter shall maintain in its offices such books, records, and accounts of its  
13 residential mortgage lending **and servicing** activities as the commissioner may  
14 reasonably require in order to determine whether such residential mortgage lender  
15 **or servicer** is complying with the provisions of this Chapter and the rules and  
16 regulations promulgated under the provisions of this Chapter. Required records may  
17 be maintained in any electronic format consistent with the residential mortgage  
18 lender's **or servicer's** ordinary business practices unless the licensee receives  
19 specific written instructions from the commissioner to the contrary. Such books,  
20 records, and accounts shall be maintained separate and apart from any other business  
21 in which the mortgage lender ~~or~~ , mortgage broker, **or mortgage servicer** is  
22 involved and shall be kept at the location in the state at which the residential  
23 mortgage lending **or servicing** activity occurred or at the residential mortgage  
24 lender's **or servicer's** principal office unless otherwise permitted in writing by the  
25 commissioner. Records must be made available for review or examination at a  
26 nonresidential location approved by the commissioner.

27 B.(1) The commissioner may examine the books, records, and accounts of  
28 any licensed residential mortgage lender **or servicer** and of any formerly licensed  
29 residential mortgage lender **or servicer** which is engaged in the collection or

1 enforcement of mortgage loans or brokerage agreements. If the records are located  
 2 outside of the state, the residential mortgage lender or servicer shall make them  
 3 available to the commissioner at a location within this state convenient to the  
 4 commissioner or pay the reasonable and necessary expenses for the commissioner  
 5 or his representative to examine them at the place where they are maintained. The  
 6 commissioner may designate representatives, including comparable officials of the  
 7 state in which the records are located, to inspect the records on his behalf.

8 \* \* \*

9 C.(1) If the commissioner receives a written complaint pertaining to the  
 10 residential mortgage lending or servicing activities of a person exempt from the  
 11 provisions of this Part or this Chapter, or exempt from licensure pursuant to the  
 12 provisions of R.S. 6:1087, the commissioner may refer the complaint to the  
 13 exempted entity for comment or response. If the complaint is not thereby resolved,  
 14 the commissioner may refer such complaints to the appropriate federal or state  
 15 regulatory, licensing, supervisory, or auditing agency or body.

16 (2) If the commissioner receives a written complaint pertaining to residential  
 17 mortgage lending or servicing activities of any other exempt person not provided  
 18 for in Paragraph (1) of this Subsection or if the federal or state regulatory, licensing,  
 19 supervisory, or auditing agency or body to which the complaint has been referred  
 20 fails to respond to the complaint within a reasonable period of time, the  
 21 commissioner may require the residential mortgage lender or servicer to respond in  
 22 writing to the complaint, may conduct such examinations as he deems necessary in  
 23 response to such complaint, and may assess such persons an examination fee as  
 24 provided in this Section.

25 §1092. Suspension and revocation of licensure; revocation of exemption; disposition  
 26 of funds; commissioner's interpretations

27 A. After notice and an opportunity to be heard as provided in the  
 28 Administrative Procedure Act, the commissioner may suspend or revoke the license  
 29 of any residential mortgage lender or servicer and, as applicable, of any originator



Proposed law extends present law to include renewal applications for residential mortgage servicers.

Present law prohibits residential mortgage lenders, or originators to operate under any other name other than the name stated on its license.

Proposed law extends present law to prohibit residential mortgage servicers from operating under any other name other than the name stated on its license.

Present law requires a residential mortgage lender to notify the commissioner of the office of financial institutions (OFI) of a change in name, location or closure.

Proposed law extends present law by requiring a residential mortgage servicer to notify the commissioner of OFI of a change in name, location or closure.

Present law provides that applicants seeking a mortgage broker or mortgage lender license shall submit a non-refundable license fee not to exceed \$400, as determined by the commissioner of OFI.

Proposed law extends present law regarding application fees to applicants seeking a mortgage servicer license.

Present law provides that no person shall acquire or control a license to make or broker residential mortgage loans through acquisition or control of 51% 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.

Proposed law extends present law regarding acquisition or control of a license to licensees authorized to service residential mortgage loans.

Present law requires residential mortgage lenders to maintain books, records and accounts of its residential mortgage lending activities. Present law allows the commissioner of OFI to examine those books, records and accounts.

Proposed law extends present law regarding maintenance and inspection of books, records and accounts to residential mortgage servicers.

Present law allows for response by residential mortgage lenders to any complaints received by the commissioner of OFI.

Proposed law extends present law to include that residential mortgage servicers may respond to any complaints received by the commissioner of OFI.

Present law allows the commissioner of OFI to suspend or revoke the license of a residential mortgage lender under certain circumstances.

Proposed law extends present law regarding revocation or suspension to residential mortgage servicers.

Effective January 1, 2009.

(Amends R.S. 6:1081, 1082, 1084, 1086(A), 1088(C)(1)(intro para), (D), (E)(1) and(3), and (F)(1), 1089(A), 1090(B)(1), 1091(A), (B)(1) and (C), and 1092(A)(intro para); adds R.S. 6:1083(13) and (14))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Makes technical change.