

## **2400 Mortgage Loan Originators**

### **2401 Mortgage Loan Originator Licensing**

5 Del.C. §§121(b), 2422

Effective Date: December 11, 2009

#### **1.0 Definitions**

For the purposes of this regulation, the following definitions apply unless the context otherwise requires:

**“Commissioner”** means the State Bank Commissioner.

**“Depository institution”** has the same meaning as in §3 of the United States Federal Deposit Insurance Act, and includes any credit union.

**“Dwelling”** has the same meaning as in §103(v) of the United States Truth in Lending Act.

**“Federal banking agencies”** means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

**“Immediate family member”** means a spouse, child, sibling, parent, grandparent or grandchild. This includes step-parents, step-children, step-siblings, and adoptive relationships.

**“Individual”** means a natural person.

**“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 Chapters 21 or 22 of Title 5 of the **Delaware Code**.

a. For purposes of this definition, ‘clerical or support duties’ may include subsequent to the receipt of an application:

1. the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
2. 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.

b. An individual engaging solely in loan processor or underwriter activities, shall 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.

**“Mortgage loan originator”** means an individual who for compensation or gain or in the expectation of compensation or gain:

- a. takes a residential mortgage loan application; or
- b. offers or negotiates terms of a residential mortgage loan;
- c. but does not include:

1. an individual engaged solely as a loan processor or underwriter, except as otherwise provided in §3.2.
2. a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Delaware 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; and
3. a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in §101(53D) of Title 11, United States Code.

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**“Nationwide Mortgage Licensing System and Registry”** means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

**“Nontraditional mortgage product”** means any mortgage product other than a 30 year fixed rate mortgage.

**“Person”** means a natural person, corporation, company, limited liability company, partnership, association, or other entity.

**“Real estate brokerage activity”** means any activity that involves offering or providing real estate brokerage services to the public, including:

- a. acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- b. bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- c. negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real 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; and
- e. offering to engage in any activity, or act in any capacity, described in a., b., c., or d. of this definition.

**“Registered mortgage loan originator”** means any individual who:

- a. meets the definition of mortgage loan originator and is an employee of:
  1. a depository institution;
  2. a subsidiary that is:
    - A. owned and controlled by a depository institution; and
    - B. regulated by a federal banking agency; or
  3. an institution regulated by the Farm Credit Administration; and
- b. is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

**“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 or residential real estate upon which is constructed or intended to be constructed a dwelling.

**“Residential real estate”** means any real property located in Delaware, upon which is constructed, or intended to be constructed, a dwelling.

**“Statute”** means the Delaware S.A.F.E. Mortgage Licensing Act of 2009, 5 **Del.C.** Ch. 24, as amended.

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

## **2.0 Exemptions**

The following are exempt from the statute and this regulation:

- 2.1 registered mortgage loan originators, when acting for an entity that is:
  - 2.1.1 a depository institution;
  - 2.1.2 a subsidiary that is:
    - 2.1.2.1 owned and controlled by a depository institution; and
    - 2.1.2.2 regulated by a federal banking agency; or
  - 2.1.3 an institution regulated by the Farm Credit Administration;

- 2.2 any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- 2.3 any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and
- 2.4 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.

### **3.0 License and Registration Required**

- 3.1 Unless specifically exempted from the statute and this regulation, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and then annually maintaining a license issued by the Commissioner under the statute and this regulation.
- 3.2 A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter without first obtaining and then annually maintaining a license issued by the Commissioner under the statute and this regulation.
- 3.3 Each licensed mortgage loan originator must register with the Nationwide Mortgage Licensing System and Registry and maintain a valid unique identifier.
- 3.4 Licenses shall not be transferable or assignable.
- 3.5 Every person licensed under the statute and this regulation shall be a financial institution for purposes of Part I of Title 5 of the Delaware Code.

### **4.0 Applications**

- 4.1 Any person seeking an initial license to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall submit an application to the Commissioner through the Nationwide Mortgage Licensing System and Registry. All such applicants shall furnish to that System information concerning the applicant's identity, including:
  - 4.1.1 fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and
  - 4.1.2 personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for that System and the Commissioner to obtain:
    - 4.1.2.1 an independent credit report obtained from a consumer reporting agency described in §603(p) of the United States Fair Credit Reporting Act; and
    - 4.1.2.2 information related to any administrative, civil or criminal findings by any governmental jurisdiction.
- 4.2 Any individual seeking to renew an existing license to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall submit an application to the Commissioner through the Nationwide Mortgage Licensing System and Registry at least 30 days before the expiration of the existing license. A renewal application that is not received by that time shall be treated as an application for an initial license and shall be subject to the investigation fee, but not the pre-licensing education and testing requirements.
- 4.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 4.4 All applications must be submitted with the annual license fee and the Nationwide Mortgage Licensing System and Registry processing fee. Initial applications must also be submitted with the investigation fee.

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- 4.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 4.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 4.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

**5.0 Fees**

- 5.1 An investigation fee of \$250.00 must be submitted with the application for an initial license. This fee is non-refundable.
- 5.2 An annual license fee of \$250.00 must be submitted with all applications. This fee shall be refunded if the application is denied, but shall not be reduced or refunded in any amount if the license is issued for less than one year; or is surrendered, suspended, canceled or revoked prior to its expiration.
- 5.3 A Nationwide Mortgage Licensing System and Registry processing fee of \$30.00 (or such other amount as that System may charge) must be submitted with all applications. This fee is non-refundable.

**6.0 Issuance of Initial License**

- 6.1 The Commissioner shall issue a mortgage loan originator license only upon finding, at a minimum, that:
  - 6.1.1 The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacating of a revocation shall not be deemed a revocation.
  - 6.1.2 The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
    - 6.1.2.1 during the 7-year period preceding the date of the application for licensing and registration; or
    - 6.1.2.2 at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;
    - 6.1.2.3 provided that any conviction that has been pardoned shall not be a conviction for the purposes of this section.
  - 6.1.3 The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate as a mortgage loan originator honestly, fairly, and efficiently within the purposes of the statute and this regulation. For purposes of this section, applicants have demonstrated that they are not financially responsible when they have shown a disregard in the management of their own financial condition. A determination that an applicant has not shown financial responsibility may include, but not be limited to:
    - 6.1.3.1 current outstanding judgments, except judgments solely as a result of medical expenses;
    - 6.1.3.2 current outstanding tax liens or other government liens and filings;
    - 6.1.3.3 foreclosures within the past three years;
    - 6.1.3.4 a pattern of seriously delinquent accounts within the past three years; or
    - 6.1.3.5 failure to pay the State or the Commissioner any money when due.
  - 6.1.4 The applicant has completed the pre-licensing education requirements described in §8.0.
  - 6.1.5 The applicant has passed a written test that meets the test requirements described in §9.0; and
  - 6.1.6 The applicant has met the surety bond requirements described in §12.0.

## **7.0 Denial of Initial License**

- 7.1 If the Commissioner refuses to issue an initial license, the Commissioner shall notify the applicant in writing of that refusal, of the reasons for the refusal, and of the applicant's right to request a hearing; provided however, the Commissioner shall retain any investigation or other fee charged for the expense of processing an initial application, notwithstanding that the application was rejected.
- 7.2 The Commissioner shall send a copy of the notice to the applicant at that individual's last known mailing address by certified mail, return receipt requested. If the applicant sends the Commissioner a written request for a hearing within 10 days of the notice's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

## **8.0 Pre- Licensing Education**

- 8.1 To meet the pre-licensing education requirements of §6.1.4, an applicant must complete at least 20 hours of education that include:
- 8.1.1 federal law and regulations – 3 hours;
  - 8.1.2 ethics, to include instruction on fraud, consumer protection, and fair lending issues – 3 hours; and
  - 8.1.3 lending standards for the nontraditional mortgage product marketplace – 2 hours.
- 8.2 All pre-licensing education courses must be approved by the Nationwide Mortgage Licensing System and Registry.
- 8.3 Pre-licensing education may be offered either in a classroom, online or by any other means and at any location approved by the Nationwide Mortgage Licensing System and Registry.
- 8.4 Any pre-licensing education courses specified in §8.1.1 to §8.1.3 that are approved by the Nationwide Mortgage Licensing System and Registry for any other state shall be accepted as credit towards completion of the pre-licensing education requirements in this State.
- 8.5 A person previously licensed under the statute and this regulation subsequent to the effective date of the statute and this regulation applying to be licensed again must have completed all of the continuing education requirements for the year in which the previous license was last held.

## **9.0 Testing**

- 9.1 To meet the written test requirements of §6.1.5, an applicant must pass a written test developed by the Nationwide Mortgage Licensing System and Registry that adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
- 9.1.1 ethics;
  - 9.1.2 federal law and regulation pertaining to mortgage origination;
  - 9.1.3 state law and regulation pertaining to mortgage origination; and
  - 9.1.4 federal and state law and regulation, pertaining to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
- 9.2 An applicant must achieve a score of at least 75 percent correct answers to the test questions for a passing grade.
- 9.3 The test must be administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry, and may be taken at any location approved by that System.
- 9.4 An applicant may take a test 3 consecutive times, with each consecutive test occurring at least 30 days after the preceding test.
- 9.5 After failing 3 consecutive tests, an applicant must wait at least 6 months before taking the test again.
- 9.6 A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer must retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

**10.0 License Renewal**

- 10.1 The Commissioner shall renew a mortgage loan originator's license only upon finding, at a minimum, that:
- 10.1.1 the mortgage loan originator continues to meet the minimum standards for initial license issuance under §6.0;
  - 10.1.2 the mortgage loan originator has satisfied the annual continuing education requirements described in §11.0; and
  - 10.1.3 the mortgage loan originator has paid all required fees for renewal of the license.
- 10.2 The Commissioner may refuse to renew a mortgage loan originator's license pursuant to §13.0.

**11.0 Continuing Education**

- 11.1 To meet the annual continuing education requirements of §10.1.2, a licensed mortgage loan originator must complete during every calendar year after initial licensing at least 8 hours of education that include:
- 11.1.1 federal law and regulations – 3 hours;
  - 11.1.2 ethics, to include instruction on fraud, consumer protection, and fair lending issues – 2 hours; and
  - 11.1.3 lending standards for the nontraditional mortgage product marketplace – 2 hours.
- 11.2 All continuing education courses must approved by the Nationwide Mortgage Licensing System and Registry.
- 11.3 Continuing education may be offered either in a classroom, online or by any other means and at any location approved by the Nationwide Mortgage Licensing System and Registry.
- 11.4 A licensed mortgage loan originator:
- 11.4.1 except as provided in §11.8, may only receive credit for a continuing education course in the calendar year in which the course is taken; and
  - 11.4.2 may not take the same course in the same or successive calendar years to meet the annual requirements for continuing education.
- 11.5 A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.
- 11.6 Any continuing education courses specified in §11.1.1 to §11.1.3 that are approved by the Nationwide Mortgage Licensing System and Registry for any other state shall be accepted as credit towards completion of the continuing education requirements in this State.
- 11.7 A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which a license was held prior to issuance of a new or renewed license.
- 11.8 A mortgage loan originator who applies for a license renewal and meets the requirements of §10.1 and §10.3, but fails to complete the required continuing education credits by December 31 shall submit to the Commissioner by that date a specific plan for making up the deficiency of necessary credits by March 1 of the succeeding year.
- 11.8.1 Unless the Commissioner notifies the mortgage loan originator to the contrary by January 31, the plan shall be deemed accepted by the Commissioner and the mortgage loan originator's license will be renewed provisionally until March 15.
  - 11.8.2 Not later than March 15, the mortgage loan originator shall submit to the Commissioner a written certification of completion of the plan that includes the title, date, and number of credits earned at each course.
  - 11.8.3 The Commissioner may refuse to renew pursuant to §13.0 the license of a mortgage loan originator with a continuing education deficiency who fails to submit either the plan or certification required by this section.

**12.0 Surety Bonds**

- 12.1 All licensed mortgage loan originators and applicants for an initial license under the statute and this regulation shall file with the Commissioner an original corporate surety bond in a form satisfactory to the Commissioner in accordance the requirements of this section.
- 12.2 The surety bond for an applicant for an initial license shall be a minimum of \$25,000. The surety bond for a licensed mortgage loan originator shall be in a minimum amount in accordance with the following table based upon the volume of Delaware mortgage loans which that licensee originated for the year ending December 31 that precedes the effective year of the license. The amount of a surety bond that is effective for more than one year shall be adjusted as of December 31 of each year to ensure that the minimum required amount is maintained.

<b>Annual Volume of Delaware Mortgage Loans</b>	<b>Minimum Required Amount of Surety Bond</b>
not more than \$11,000,000	\$25,000
\$11,000,001 - \$23,000,000	\$50,000
\$23,000,001 - \$35,000,000	\$75,000
\$35,000,001 - \$47,000,000	\$100,000
\$47,000,001 - \$59,000,000	\$125,000
\$59,000,001 - \$71,000,000	\$150,000
\$71,000,001 - \$83,000,000	\$175,000
\$83,000,001 and over	\$200,000

- 12.3 The Commissioner may require a larger surety bond based upon the particular circumstances of the applicant or licensee.
- 12.4 No bond shall be accepted unless the following requirements are satisfied:
  - 12.4.1 The aggregate value of the bond shall be equal to, or greater than, the amount determined in accordance with §12.2;
  - 12.4.2 The term of the bond shall be commensurate with the license period or continuous;
  - 12.4.3 The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and
  - 12.4.4 The bond shall run to the State for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the mortgage loan originator in the course of that individual's activity as such. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the mortgage loan originator. Surety claims shall be paid to the Office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.
- 12.5 If a mortgage loan originator changes surety company or the bond is otherwise amended, the mortgage loan originator shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.
- 12.6 The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a mortgage loan originator, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

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- 12.7 When a surety company receives a claim against the bond of a mortgage loan originator, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.
- 12.8 The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.
- 12.9 A new bond shall be filed when an action is commenced on an existing bond.
- 12.10 Mortgage loan originators who are employees or exclusive agents of a licensee under Chapters 21 or 22 of Title 5 of the Delaware Code can use the surety bond of their employer or principal in lieu of their surety bond requirement under this section, if the surety bond of the employer or principal is in a minimum amount as provided in §12.2 based on the total annual volume of Delaware mortgage loans originated by all mortgage loan originators covered by that surety bond, that surety bond meets all the requirements of this section, and the employer or principal consents to that use. Licensees under those Chapters shall notify the Commissioner in writing of the names of the mortgage loan originators who are covered by their bond, and of any changes in that coverage.

**13.0 Revocation, Suspension, Reprimand and Other Discipline**

- 13.1 The Commissioner may revoke, suspend, condition, or refuse to renew any license, or publicly reprimand a licensee under the statute and this regulation upon finding that the licensee:
  - 13.1.1 has violated or failed to comply with any provision of the statute; this regulation; any rule, regulation, order, or supervisory letter promulgated by the Commissioner under the authority of Title 5 of the Delaware Code; or any other law, rule or regulation of this State or the federal government;
  - 13.1.2 has failed at any time to meet the requirements of §§6.0 or 10.0; or
  - 13.1.3 has withheld information or made a material misstatement in an initial or renewal application for a license.
- 13.2 Whenever the Commissioner determines to take any action under this section, the Commissioner shall issue a written order that shall include a statement of the facts upon which the action is based and a notice that the licensee may request a hearing in accordance with Chapter 101 of Title 29 of the Delaware Code.
- 13.3 Except as provided in §13.4, an order under this section shall not become effective less than 10 days after its mailing date.
- 13.4 The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the public health, safety or welfare clearly requires emergency action and the Commissioner's order so states.
- 13.5 Upon its issuance, the Commissioner shall send a copy of the order to the licensee at that individual's last known mailing address by certified mail, return receipt requested.
  - 13.5.1 If the licensee sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold a hearing in accordance with Chapter 101 of Title 29 of the Delaware Code, and except as provided in §13.4, the order then shall not become effective until the conclusion of the hearing.
  - 13.5.2 At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.
- 13.6 No action taken under this section shall in any way impair or otherwise affect either the obligations of any pre-existing lawful contract between the licensee and any person, or the licensee's civil or criminal liability.
- 13.7 If the expiration or surrender of a license occurs after the Commissioner issues a written order under §13.2, the Commissioner may proceed as if the expiration or surrender had not occurred.
- 13.8 The conditions that may be imposed pursuant to this section on a license and on the reinstatement of a suspended license may include the payment of restitution to consumers for fees or other charges that the licensee improperly charged or collected.



**14.0 Information Challenges**

- 14.1 A mortgage loan originator may challenge information that the Commissioner has entered into the Nationwide Mortgage Licensing System and Registry by submitting to the Commissioner a written statement that identifies the specific information being challenged and provides evidence that this information is incorrect.
- 14.2 Upon receipt of an information challenge, the Commissioner shall consider the merits of the challenge and issue a written preliminary determination.
- 14.3 Upon issuance, the Commissioner shall send a copy of the determination to the mortgage loan originator initiating the challenge at that individual's last known address by certified mail, return receipt requested.
- 14.4 The Commissioner's preliminary determination will be the final resolution of the challenge, unless the mortgage loan originator sends the Commissioner a written request for a hearing within 10 days of the mailing date of the preliminary determination. The Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29 of the **Delaware Code**; provided, however, that if the subject matter of the information at issue is a decision issued pursuant to such a hearing or by a court of competent jurisdiction, then the Commissioner shall only confirm that the decision was correctly entered into the Nationwide Mortgage Licensing System and Registry and inform the mortgage loan originator of that confirmation without holding a hearing.

**15.0 Records and Reports**

- 15.1 Every licensed mortgage loan originator shall promptly notify the Commissioner of the following:
  - 15.1.1 any change of primary residence address;
  - 15.1.2 any pending felony charges or conviction;
  - 15.1.3 any pending criminal charges or conviction involving financial services, a financial services related business, fraud, dishonesty, breach of trust, false statements or omissions, consumer deception, theft, wrongful taking of property, identity theft, bribery, perjury, forgery, extortion, or money laundering;
  - 15.1.4 cessation of employment or termination of affiliation with any person for whom the mortgage loan originator had been providing residential mortgage loan origination services;
  - 15.1.5 the initiation, settlement, or other resolution of any complaint, litigation, administrative action, or other proceeding against the mortgage loan originator by any person, governmental unit or self-regulatory organization involving residential mortgage loans, financial services, a financial services related business, fraud, dishonesty, breach of trust, false statements or omissions, consumer deception, theft, wrongful taking of property, identity theft, bribery, perjury, forgery, extortion, or money laundering;
  - 15.1.6 the filing of any bankruptcy petition in which the mortgage loan originator is the debtor in the proceeding;
  - 15.1.7 the entry of any judgment, tax lien, other government lien or similar filing against the mortgage loan originator; and
  - 15.1.8 the initiation of any foreclosure action against the mortgage loan originator.
- 15.2 Every licensed mortgage loan originator shall maintain a journal of residential mortgage loan applications, which shall include, at a minimum, the following information:
  - 15.2.1 the full name and address of all proposed borrowers and co-borrowers;
  - 15.2.2 the address of the residential real estate to be used as security for the loan;
  - 15.2.3 the date the mortgage loan originator took the loan application for the mortgage loan;
  - 15.2.4 the name and the unique identifier or other unique identifying number of the mortgage loan originator's employer or other person for whom the mortgage loan originator was providing residential mortgage loan origination services; and

15.2.5 the disposition of the loan application and date of disposition. The disposition of the application shall be categorized as either loan closed, loan denied, application withdrawn, application in process, or other (with an explanation provided).

15.2.6 The journal shall be kept current, updated no less frequently than every 10 business days.

15.3 All licensed mortgage loan originators who maintain their own surety bond coverage must keep copies of their bonds and also provide copies to their employer or other person for whom the mortgage loan originator was providing residential mortgage loan origination services.

15.4 All records required by this section shall be maintained for a period of five (5) years.

#### **16.0 Surrender of License**

A mortgage loan originator may surrender a license issued under the statute and this regulation by submitting a written notice of license surrender to the Commissioner or the Nationwide Mortgage Licensing System and Registry. A license may be surrendered only by the individual to whom the license was issued.

#### **17.0 Expiration of Licenses**

17.1 All licenses issued under the statute and this regulation expire on December 31 of each year; provided however, that if a renewal application is received prior to that date, the applicant may continue to act as a mortgage loan originator until the Commissioner has made a determination on that application.

17.2 Whenever a license expires, the Commissioner shall send the licensee a written notice of that expiration stating that the licensee may no longer engage in the business of a mortgage loan originator with respect to any dwelling located in this State.

#### **18.0 Duration of License**

18.1 Every license issued under the statute and this regulation shall remain in effect until it expires, or is surrendered, suspended, or revoked.

18.2 When a mortgage loan originator's Delaware license becomes ineffective, the Commissioner may send a written notice of that fact to the mortgage loan originator's employer or other person for whom the mortgage loan originator had been providing residential mortgage loan origination services.

18.3 Whenever a mortgage loan originator's Delaware license ceases to be effective for any reason, neither the obligations of any pre-existing lawful contract between the mortgage loan originator and any person, nor the mortgage loan originator's civil or criminal liability for acts committed while that license was in effect shall be affected in any way.

#### **19.0 Nationwide Mortgage Licensing System and Registry**

The administrator of the Nationwide Mortgage Licensing System and Registry is authorized to act on behalf of the Commissioner to process applications, to collect payments, to receive information and to maintain records related to the administration of the statute and this regulation.

#### **20.0 Examination Fees and Supervisory Assessments**

20.1 The Commissioner may conduct investigations and examinations pursuant to §122 and §2417 of Title 5 of the **Delaware Code**.

20.2 The cost of such investigations and examinations is assessed in accordance with §127(a) and §2417(b)(6) of Title 5 of the **Delaware Code**. A person subject to investigation or examination shall remit payment not later than 30 days of the examination invoice.

20.3 The Commissioner shall assess each licensee under the statute and this regulation a supervisory assessment that is due and payable on August 1 of each year, in accordance with §127(b) of Title 5 of the **Delaware Code**.

- 20.4 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day the such fee or assessment remains unpaid after the due date, in accordance with §127(a) and §127 (b) of Title 5 of the **Delaware Code**, and may also result in license revocation, suspension or other disciplinary action under §13.0.

**21.0 Unique Identifiers**

The unique identifier of any individual originating a residential mortgage loan on a dwelling located in this State shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual, and on all solicitations, advertisements, business cards, and websites listing the name of that individual.

**22.0 Prohibited Acts And Practices**

A person subject to the statute and this regulation shall not:

- 22.1 directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- 22.2 engage in any unfair or deceptive practice toward any person;
- 22.3 obtain property by fraud or misrepresentation;
- 22.4 solicit or enter into a contract with a borrower that provides in substance that the person subject to the statute and this regulation may earn a fee or commission through 'best efforts' to obtain a loan even though no loan is actually obtained for the borrower;
- 22.5 solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- 22.6 conduct any business covered by the statute and this regulation without holding a valid license as required under the statute and this regulation, or assist or aid and abet any person in the conduct of business under the statute and this regulation without a valid license as required under the statute and this regulation;
- 22.7 fail to make disclosures as required by the statute and this regulation and any other applicable federal or State law including regulations thereunder;
- 22.8 fail to comply with the statute and this regulation or rules or regulations promulgated under the statute, or fail to comply with any other federal or State law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this the statute and this regulation;
- 22.9 make, in any manner, any false or deceptive statement or representation, or engage in 'bait and switch' advertising;
- 22.10 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 Nationwide Mortgage Licensing System and Registry or in connection with any investigation or examination conducted by the Commissioner or another governmental agency;
- 22.11 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;
- 22.12 collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by the statute and this regulation;
- 22.13 cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or
- 22.14 fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

**23.0 Transition**

Pursuant to §2404(e) of the statute and Section 2 of 77 Delaware Laws Chapter 96, the Commissioner may annually renew any license issued pursuant to Chapter 24 of Title 5 of the Delaware Code as it existed immediately prior to the enactment of the statute until such time as the statute is fully implemented; and also issue new licenses pursuant to that prior chapter until the later of either July 31, 2010, or until the Nationwide Mortgage Licensing System and Registry develops the qualified written test required for initial license applicants as specified by §2408(a) of the statute and §9.0 of this regulation, and the System is fully able to process applications pursuant to the statute.

**12 DE Reg. 818 (12/01/08)**

**13 DE Reg. 852 (12/01/09)**