

# DEPARTMENT OF STATE

## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);  
(5 Del.C. §§121(b), 2112, 2210(e), 2741, and 2906(e))  
5 DE Admin. Code 2101, 2201, 2701 and 2901

### FINAL

### ORDER

#### 2101 Operating Regulation

IT IS HEREBY ORDERED, this 7<sup>th</sup> day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB 286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

#### 2101 Operating Regulation

5 Del.C. §§2102(b) and 2112

Effective Date: December 11, 2014

#### 1.0 Applicability of Chapter

1.1 5 Del.C. Ch. 21 applies only to extensions of credit secured by one to four family residential owner-occupied property located in this State intended for personal, family, or household purposes.

1.2 5 Del.C. Ch. 21 does not apply to:

1.2.1 mortgage loans secured by any property of 25 acres or more; and

1.2.2 mortgage loans intended for commercial purposes.

## **2.0 Compliance with Applicable Laws**

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 21, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 21 and the following regulations:
  - 2.3.1 Regulation 101, Retention of Financial Institution Records;
  - 2.3.2 Regulation 2101, Operating Regulation;
  - 2.3.3 Regulation 2102, Minimum Records;
  - 2.3.4 Regulation 2103, Schedule of Charges;
  - 2.3.5 Regulation 2104, Minimum Disclosure and Agreement Requirements;
  - 2.3.6 Regulation 2105, Report of Delaware Loan Volume;
  - 2.3.7 Regulation 2106, Report of Delaware Assets;
  - 2.3.8 Regulation 2107/2208, Guidance on Nontraditional Mortgage Product Risks;
  - 2.3.9 Regulation 2108/2209, Statement on Subprime Mortgage Lending; and
  - 2.3.10 Regulation 2401, Mortgage Loan Originator Licensing.

## **3.0 Display of License**

~~Each licensed office open to the public shall prominently display its license issued under 5 **Del.C.** Ch. 21 in clear view of all customers.~~

~~18 DE Reg. 472 (12/01/14)~~

## **4.03.0 Loan Closings in the Name of a Licensee**

A mortgage loan shall not close in the name of a licensee unless such a closing is required by either a government agency or a government sponsored entity.

## **5.04.0 Mortgage Loan Originators**

- ~~54.1~~ Each licensee shall insure that every person who it employs, or is affiliated with it, as a mortgage loan originator, as defined by 5 **Del.C.** Ch. 24, to provide mortgage loan originator services has complied with all the requirements of that chapter and the regulations issued thereunder.
- ~~54.2~~ Each licensee shall promptly notify the Commissioner of the cessation of employment or termination of affiliation of any mortgage loan originator who had been providing residential mortgage loan origination services for the licensee.
- ~~54.3~~ The unique identifier, issued by the Nationwide Mortgage Licensing System and Registry, of the applicable mortgage loan originator shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual.
- ~~54.4~~ A licensee may use its surety bond under 5 **Del.C.** Ch. 21 to cover mortgage loan originators who are its employees or exclusive agents if the bond conforms to all requirements of 5 **Del.C.** §2415 and §12.0 of Regulation 2401.
  - ~~54.4.1~~ A licensee's irrevocable letter of credit may not be used to cover mortgage loan originators.
  - ~~54.4.2~~ A licensee shall notify the Commissioner in writing of the names of the mortgage loan originators who are covered by its surety bond and of any change in such coverage for those originators.

~~18 DE Reg. 472 (12/01/14)~~

## **6.05.0 Advertising**

- ~~65.1~~ A licensee shall not advertise in any way that is false, misleading or deceptive.
- ~~65.2~~ Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.
- ~~65.3~~ A licensee shall not advertise any credit terms that are not actually available.

65.4 When a licensee advertises with respect to its services under 5 **Del.C.** Ch. 21, the advertisement may state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State and may specify the license number and expiration date of the license.

**18 DE Reg. 472 (12/01/14)**

#### **7.06.0 Internet Websites**

If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

**18 DE Reg. 472 (12/01/14)**

#### **8.07.0 Reports**

Each licensee shall submit to the Nationwide Mortgage Licensing System and Registry such reports of condition at such times, in such form and containing such information as that System shall require.

#### **9.08.0 Information Security**

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers related to the business governed by this regulation, including, but not limited to, all application information, account information, and information from any consumer report.

#### **409.0 License Applications**

409.1 The Nationwide Mortgage Licensing System and Registry, as the multi-state automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2117, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 21, and in that capacity, the System may, with respect to that chapter:

409.1.1 process licensing applications;

409.1.2 collect licensing payments;

409.1.3 submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;

409.1.4 receive information and maintain records regarding applicants and licensees; and

409.1.5 share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch. 21.

409.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch. 21 shall submit the appropriate application and fees to the Commissioner through the Nationwide Mortgage Licensing System and Registry.

409.3 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.

409.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$250, the annual licensing fee of \$500.00, and the Nationwide Mortgage Licensing System processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Mortgage Licensing System processing fee and the investigation fee are non-refundable.

409.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.

409.6 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.

409.7 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.

#### **4410.0 Examination Fees and Supervisory Assessments**

- 4410.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §§122 and 2110. The costs of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 4410.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 4410.3 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 that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

#### **4211.0 Examination Responses**

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

**3 DE Reg. 653 (11/01/99)**

**13 DE Reg. 862 (12/01/09)**

**17 DE Reg. 994 (04/01/14)**

**18 DE Reg. 472 (12/01/14)**

**20 DE Reg. 304 (10/01/16) (Final)**