

Act No. 14
Public Acts of 2009
Approved by the Governor
April 9, 2009
Filed with the Secretary of State
April 9, 2009
EFFECTIVE DATE: April 9, 2009

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Senators Hardiman, Van Woerkom, Richardville and Olshove

ENROLLED SENATE BILL No. 381

AN ACT to amend 1981 PA 125, entitled "An act to regulate secondary mortgage loans; to regulate secondary mortgage brokers, lenders, servicers, and loan officers; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to provide remedies and prescribe penalties," by amending section 1 (MCL 493.51), as amended by 2008 PA 325.

The People of the State of Michigan enact:

Sec. 1. (1) This act shall be known and may be cited as "the secondary mortgage loan act".

(2) As used in this act:

(a) "Broker" means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make a secondary mortgage loan.

(b) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of energy, labor, and economic growth or his or her authorized representatives.

(c) "Control person" means a director or executive officer of a licensee or registrant or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(d) "Depository financial institution" means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(e) "Exclusive broker" means a person that brokers secondary mortgage loans solely to 1 licensee or registrant, is compensated solely by that licensee or registrant, and is indemnified by the licensee or registrant as provided in section 6. The actions or practices of an exclusive broker in brokering a secondary mortgage loan are the actions or practices of the licensee or registrant.

(f) "Executive officer" means an officer, member, or partner of a licensee or registrant. The term includes the chief executive officer, president, vice president, chief financial officer, controller, or compliance officer, or an individual holding any other similar position.

(g) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

(i) "Licensee" means a person licensed or required to be licensed under this act. As used in sections 2a, 2b, 2c, and 2d, the term also includes a licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(j) "Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(k) "Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

(l) "Originate" means any of the following:

(i) To negotiate, arrange, or offer to negotiate or arrange a secondary mortgage loan between a lender and 1 or more individuals.

(ii) To place, assist in placing, or find a secondary mortgage loan for 1 or more individuals.

(m) "Person" means an individual, corporation, limited liability company, partnership, association, or other legal entity.

(n) "Registrant" means a person that is registered or required to register as a broker, lender, or servicer under this act. The term does not include a secondary mortgage loan officer registrant or depository financial institution.

(o) "Secondary mortgage loan" means a loan that has a term of 90 days or more; that is made to a person for personal, family, or household purposes; and that is secured by a mortgage on an interest in real property that is used as a dwelling and is subject to a lien of 1 or more outstanding mortgages. A secondary mortgage loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, a secondary mortgage loan is subject to this act and all other applicable laws of this state.

(p) "Secondary mortgage loan officer" means an individual who is an employee or agent of a broker, lender, or servicer; who originates secondary mortgage loans; and who is not an employee or agent of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

(q) "Secondary mortgage loan officer registrant" means either of the following:

(i) An individual who is currently registered under section 2a or 2c.

(ii) An individual who is not required to register to perform services of a secondary mortgage loan officer under section 2a(9).

(r) "Service" means the collection or remittance for a lender, noteowner, or noteholder or a licensee's own account of 4 or more installment payments of the principal of, interest of, or an amount placed in escrow under a secondary mortgage loan, mortgage servicing agreement, or an agreement with a mortgagor.

(s) "Servicer" means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

(a) Senate Bill No. 379.

(b) Senate Bill No. 380.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor