



HOUSE BILL No. 4992

August 31, 1993, Introduced by Rep. Griffin and referred to the Committee on Business and Finance.

A bill to amend sections 1a, 4, 5, 6, 22, 25, and 29 of Act No. 173 of the Public Acts of 1987, entitled "Mortgage brokers, lenders, and servicers licensing act," sections 1a, 4, and 25 as amended by Act No. 451 of the Public Acts of 1988, being sections 445.1651a, 445.1654, 445.1655, 445.1656, 445.1672, 445.1675, and 445.1679 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1a, 4, 5, 6, 22, 25, and 29 of Act
2 No. 173 of the Public Acts of 1987, sections 1a, 4, and 25 as
3 amended by Act No. 451 of the Public Acts of 1988, being
4 sections 445.1651a, 445.1654, 445.1655, 445.1656, 445.1672,
5 445.1675, and 445.1679 of the Michigan Compiled Laws, are amended
6 to read as follows:

1 Sec. 1a. As used in this act, unless the context requires
2 otherwise:

3 (a) "Affiliate" means a person or group of persons that
4 directly or indirectly through 1 or more intermediaries controls,
5 is controlled by, or is under common control with another person
6 and engaged in a business related to transactions governed by
7 this act.

8 (b) "Commissioner" means the commissioner of the financial
9 institutions bureau of the department of commerce or his or her
10 authorized agent.

11 (c) "Depository financial institution" means a state or
12 nationally chartered bank, ~~or~~ a state or federally chartered
13 savings and loan association or savings bank, ~~or~~ a state or
14 federally chartered credit union, A STATE OR FEDERALLY CHARTERED
15 SAVINGS BANK, or an entity of the federally chartered farm credit
16 system.

17 (d) "Firm commitment" means an underwriting in which a
18 broker-dealer commits to buy the mortgage loan or the entire
19 issue of securities based upon or backed by 1 or more mortgage
20 loans and assumes all financial responsibility for any unsold
21 securities.

22 (e) "Individual investor" means a person residing in this
23 state or having its principal place of business in this state,
24 other than a bank, savings bank, savings and loan association,
25 credit union, trust company, insurance company, investment com-
26 pany as defined in the investment company act of 1940, TITLE I OF
27 chapter 686, ~~+5 U.S.C. 80a-1 to 80a-64~~ 54 STAT. 789, pension or

1 profit sharing plan, the assets of which are managed by a bank or
 2 trust company or other institutional manager, financial institu-
 3 tion, institutional manager, broker-dealer which is a member of
 4 the New York stock exchange or registered under the uniform
 5 securities act, Act No. 265 of the Public Acts of 1964, being
 6 sections 451.501 to 451.818 of the Michigan Compiled Laws, the
 7 federal national mortgage association, the government national
 8 mortgage association, the federal home loan mortgage corporation,
 9 or a mortgage lender or mortgage servicer.

10 (f) "License" means a license to act as a mortgage broker,
 11 mortgage lender, or mortgage servicer issued pursuant to this
 12 act.

13 (g) "Licensee" means a mortgage broker, mortgage lender, or
 14 mortgage servicer licensed or required to be licensed under this
 15 act.

16 (h) "Mortgage broker" means ~~any~~ A person who, directly or
 17 indirectly, does ~~+~~ ~~or more~~ EITHER OR BOTH of the following:

18 (i) Serves or offers to serve as an agent for ~~any~~ A person
 19 in an attempt to obtain a mortgage loan. ~~;~~ ~~or~~

20 (ii) Serves or offers to serve as an agent for ~~any~~ A
 21 person who desires to make mortgage loans.

22 (i) "Mortgage lender" means ~~any~~ A person who, directly or
 23 indirectly, makes or offers to make mortgage loans.

24 (j) "Mortgage loan" means ~~any~~ A loan secured by a first
 25 mortgage on real property used, or improved to be used, as a
 26 dwelling and designed for occupancy by 4 or fewer families or a
 27 land contract covering real property used, or improved to be

1 used, as a dwelling and designed for occupancy by 4 or fewer
2 families.

3 (k) "Mortgage servicer" means ~~any~~ A person who, directly
4 or indirectly, services or offers to service mortgage loans.

5 (l) "Person" means an individual, ~~sole proprietorship, or~~
6 ~~a~~ corporation, partnership, ASSOCIATION, GOVERNMENTAL ENTITY, or
7 any other ~~group of individuals, however organized~~ LEGAL
8 ENTITY.

9 (m) "Real estate salesperson" means, for the purposes of
10 this act only, a salesperson or an associate broker, licensed
11 under article 25 of the occupational code, Act No. 299 of the
12 Public Acts of 1980, being sections 339.2501 to 339.2515 of the
13 Michigan Compiled Laws.

14 (n) "Register" means filing a notice with the commissioner
15 ~~on a form prescribed by the commissioner~~ that notifies the com-
16 missioner of the intent to engage in the activities of a mortgage
17 broker, mortgage lender, or mortgage servicer in this state.

18 (o) "Registrant" means a mortgage broker, mortgage lender,
19 or mortgage servicer registered or required to be registered
20 under this act.

21 (p) "Service" means to receive more than 3 installment pay-
22 ments of the principal, interest, or an amount ~~placed in escrow~~
23 COLLECTED FOR THE PAYMENT OF TAXES AND INSURANCE pursuant to a
24 mortgage loan.

25 Sec. 4. (1) Except as otherwise provided in this section,
26 at the time of filing an application for a license or renewal of
27 a license, an applicant who acts as a mortgage broker and who

1 receives funds from a prospective borrower ~~prior to~~ BEFORE the
2 closing of the mortgage loan ~~or an~~ SHALL DEPOSIT WITH THE COM-
3 MISSIONER \$15,000.00 AS PROOF OF FINANCIAL RESPONSIBILITY. AN
4 applicant who acts as a mortgage lender shall deposit with the
5 commissioner \$15,000.00 as proof of financial responsibility. ~~7~~
6 ~~and an~~ AN applicant who acts as a mortgage servicer shall
7 deposit WITH THE COMMISSIONER \$100,000.00 as proof of financial
8 responsibility. THE DEPOSIT SHALL BE by 1 of the following
9 means:

10 (a) A corporate surety bond payable to the commissioner,
11 executed by a corporate surety approved by the commissioner,
12 which expires no earlier than the date the license shall expire.

13 (b) An irrevocable letter of credit upon which the applicant
14 is the obligor, which expires no earlier than the date the
15 license shall expire, issued by a bank, savings bank, savings and
16 loan association, or credit union the deposits of which are
17 insured by an agency of the federal government, and the terms of
18 which letter of credit are approved by the commissioner.

19 (2) The bond or letter of credit deposited under
20 subsection (1) shall be conditioned upon the conduct of the busi-
21 ness in accordance with the provisions of this act, ~~and~~ all
22 rules promulgated by the commissioner, and the payment of all
23 money that becomes due.

24 (3) ~~In place~~ INSTEAD of depositing a bond or letter of
25 credit AS DESCRIBED IN SUBSECTION (1), an applicant may ~~furnish~~
26 DO 1 of the following as proof of financial responsibility:

1 (a) Deposit with the state treasurer, under terms prescribed
2 by the commissioner, obligations of the United States, or
3 obligations ~~which~~ THAT are guaranteed fully as to principal and
4 interest by the United States, or any general obligations of any
5 state or any political subdivision of the United States, with a
6 maturity date of 3 years or less, in an amount equal to, or
7 greater than, the amount of the required bond OR LETTER OF
8 CREDIT. Interest earned under obligations shall accrue to the
9 account of the applicant.

10 (b) Deposit with the state treasurer, under terms prescribed
11 by the commissioner, a certificate of deposit of a federally
12 insured financial institution with a maturity date of 3 years or
13 less for an amount payable ~~which~~ THAT is equal to, or greater
14 than, the amount of the required bond OR LETTER OF CREDIT and
15 ~~which~~ THAT is not available for withdrawal except by direct
16 order of the commissioner. Interest earned under the certificate
17 shall accrue to the account of the applicant.

18 (4) Upon application as prescribed by the commissioner, the
19 commissioner may reduce, waive, or modify the requirements under
20 this section for a mortgage servicer who services not more than
21 300 mortgage loans and who does not collect money for the purpose
22 of paying taxes or insurance pursuant to the mortgage loan.

23 (5) A mortgage broker shall be exempt from the requirements
24 of this section if he or she DOES BOTH OF THE FOLLOWING:

25 (a) Deposits all funds received from a prospective borrower
26 into an escrow account and does not possess or control the funds

1 associated with the loan application ~~prior to~~ BEFORE the
2 closing or denial of the mortgage loan.

3 (b) Submits to the commissioner an opinion by a certified
4 public accountant based on current financial information verify-
5 ing a net worth as required by section 5. Nothing in this sub-
6 section shall prohibit the disbursement of funds by the escrow
7 agent to third parties for the actual cost of a property
8 appraisal and credit report in connection with a mortgage loan
9 application. Escrow accounts created pursuant to this subsection
10 shall be established in a manner approved by the commissioner and
11 shall be deposited only in a depository institution insured by
12 the federal deposit insurance corporation, the federal savings
13 and loan insurance corporation, or the national credit union
14 share insurance fund.

15 (6) The commissioner shall waive the requirements of this
16 section and section 5 upon application by a mortgage servicer who
17 is a licensed real estate broker or real estate salesperson,
18 services more than 75 land contracts, has a satisfactory record
19 of compliance with applicable state and federal law, and does not
20 engage in any other activity regulated by this act.

21 (7) The commissioner shall order a mortgage broker ~~which~~
22 WHO is exempt from this section pursuant to subsection (5), and
23 ~~which~~ takes possession of funds associated with a loan applica-
24 tion ~~prior to~~ BEFORE the closing or denial of the mortgage
25 loan, to cease and desist from brokering mortgages until the
26 mortgage broker provides proof of financial responsibility
27 pursuant to this section.

1 Sec. 5. ~~Each~~ A licensee who ~~shall solely act~~ ACTS as a
2 mortgage broker and who receives funds from a prospective bor-
3 rower ~~prior to~~ BEFORE the closing of the mortgage loan ~~or a~~
4 SHALL HAVE A MINIMUM NET WORTH IN AN AMOUNT DETERMINED BY THE
5 COMMISSIONER NOT EXCEEDING \$25,000.00. A licensee who ~~shall act~~
6 ~~solely~~ ACTS as a mortgage lender shall have a minimum net worth
7 in an amount determined by the commissioner not exceeding
8 \$25,000.00. ~~Each~~ A licensee who ~~shall act~~ ACTS as a mortgage
9 servicer shall have a minimum net worth in an amount determined
10 by the commissioner not exceeding \$100,000.00. Net worth shall
11 be determined at the conclusion of the fiscal year of the
12 licensee immediately preceding the date an application for a
13 license, or renewal of a license, is submitted to the
14 commissioner. Net worth shall be computed in accordance with
15 generally accepted accounting principles, but the following
16 assets shall be excluded in the computation of net worth:

17 (a) That portion of an applicant's assets pledged to secure
18 obligations of ~~any~~ A person or entity other than that of the
19 applicant.

20 (b) ~~Any~~ AN asset except construction loans receivable,
21 secured by first mortgages from related companies, due from offi-
22 cers or stockholders of the applicant or persons in which the
23 applicant's officers or stockholders have an interest.

24 (c) An amount in excess of the lower of the cost or market
25 value of mortgage loans in foreclosure, or real property acquired
26 through foreclosure.

1 (d) An investment shown on the balance sheet in joint
2 ventures, subsidiaries, or affiliates ~~which~~ THAT is greater
3 than the market value of the assets.

4 (e) Good will or value placed on insurance renewals or prop-
5 erty management contract renewals or other similar intangible
6 value.

7 (f) Organization costs.

8 Sec. 6. (1) ~~The~~ ON A FORM PRESCRIBED BY THE COMMISSIONER,
9 THE following shall register: ~~with the commissioner.~~

10 (a) A mortgage broker, mortgage lender, or mortgage servicer
11 approved as a seller or servicer by the federal national mortgage
12 association or the federal home loan mortgage corporation.

13 (b) A mortgage broker, mortgage lender, or mortgage servicer
14 approved as an issuer or servicer by the government national
15 mortgage association.

16 (c) A mortgage broker, mortgage lender, or mortgage servicer
17 licensed to make regulatory loans pursuant to the regulatory loan
18 act of 1963, Act No. 21 of the Public Acts of 1939, being sec-
19 tions 493.1 to 493.26 of the Michigan Compiled Laws, or licensed
20 to make secondary mortgage loans pursuant to Act No. 125 of the
21 Public Acts of 1981, being sections 493.51 to 493.81 of the
22 Michigan Compiled Laws.

23 (d) Except as provided in subsection (7), a real estate
24 broker or real estate salesperson licensed under article 25 of
25 the occupational code, Act No. 299 of the Public Acts of 1980,
26 being sections 339.2501 to 339.2515 of the Michigan Compiled
27 Laws, who acts as a mortgage broker for not more than 1 licensee

1 or 1 registrant, or who acts as a mortgage broker, mortgage
2 lender, or mortgage servicer only in connection with real estate
3 sales in which the real estate broker or salesperson affiliated
4 with the real estate broker is engaged and who receives for such
5 services additional compensation beyond the customary commission
6 on real estate sales.

7 (2) A registrant ~~shall not be~~ IS NOT required to comply
8 with section 3, 4, 5, or 7 and ~~shall not be~~ IS NOT subject to
9 annual examination by the commissioner or be required to file
10 annual reports with the commissioner. A REGISTRANT UNDER
11 SUBSECTION (1)(C) IS SUBJECT TO THE EXAMINATION PROVISIONS OF ACT
12 NO. 21 OF THE PUBLIC ACTS OF 1939 AND ACT NO. 125 OF THE PUBLIC
13 ACTS OF 1981.

14 (3) A mortgage broker, A mortgage lender, or a mortgage
15 servicer ~~which~~ THAT is a subsidiary or affiliate of a deposi-
16 tory financial institution WHOSE PRINCIPAL OFFICE IS LOCATED IN
17 THIS STATE or a subsidiary or affiliate of a holding company of a
18 depository financial institution ~~shall not be~~ WHOSE PRINCIPAL
19 OFFICE IS LOCATED IN THIS STATE IS NOT subject to
20 section 29(1)(b) or (c).

21 (4) Notwithstanding section ~~25(m)~~ 25(N), a mortgage
22 broker, A mortgage lender, or a mortgage servicer ~~which~~ THAT is
23 a subsidiary or affiliate of a depository financial institution
24 or a subsidiary or affiliate of a holding company of a depository
25 financial institution may register and become subject to the pro-
26 visions of the act applicable to registrants.

1 (5) A registration, unless it is renewed, ~~shall expire~~
2 EXPIRES on June 30 of each year. A registration may be renewed
3 by registering with the commissioner and paying the annual fee
4 for the succeeding year. The registration and notice shall be
5 received by the commissioner on or before June 15 of each year.

6 (6) If a real estate broker or real estate salesperson acts
7 as a mortgage broker, mortgage lender, or mortgage servicer not
8 in connection with real estate sales in which the real estate
9 broker or real estate salesperson affiliated with the real estate
10 broker is engaged, the real estate broker or real estate sales-
11 person shall be licensed or registered as otherwise required
12 under this act.

13 (7) A real estate broker or real estate salesperson, in con-
14 nection with real estate sales in which the real estate broker or
15 real estate salesperson affiliated with the real estate broker is
16 engaged, who acts as a mortgage broker on 10 or fewer mortgage
17 loans in any 12-month period from July 1 to June 30 and who
18 receives for such services additional compensation beyond the
19 customary commission on real estate sales ~~shall be~~ IS exempt
20 from the registration or licensing requirements of this act for
21 that 12-month period.

22 Sec. 22. It shall be a violation of ~~the~~ THIS act if a
23 licensee or registrant DOES ANY OF THE FOLLOWING:

24 (a) Does not conduct the business in accordance with law,
25 ~~or~~ has violated ~~any other~~ A provision of this act, or a rule
26 promulgated or order issued under this act.

1 (b) Engages in fraud, deceit, or material misrepresentation
2 in connection with any transaction governed by this act.

3 (c) Intentionally or due to gross or wanton negligence,
4 repeatedly fails to provide borrowers material disclosures of
5 information as required by state or federal law.

6 (d) Suppresses or withholds from the commissioner any infor-
7 mation ~~which~~ THAT the licensee or registrant possesses and
8 ~~which~~ THAT, if submitted, would have made the licensee or reg-
9 istrant ineligible for licensing or registration under this act.

10 (e) Violates any provision of Act No. 125 of the Public Acts
11 of 1966, being sections 565.161 to 565.163 of the Michigan
12 Compiled Laws, regulating the handling of mortgage escrow
13 accounts by mortgagees.

14 (f) Fails to place in escrow any money, funds, deposits,
15 checks, drafts, or other negotiable instruments entrusted to the
16 person as a mortgage broker, mortgage lender, or mortgage servic-
17 er, in a manner approved by the commissioner, or fails to deposit
18 and retain the funds in a trust or escrow account, maintained by
19 the person, with a financial institution, the deposits of which
20 are insured by the federal deposit insurance corporation, the
21 federal savings and loan insurance corporation, or the national
22 credit union share insurance fund until the proper disbursement.

23 (g) Refuses to permit an examination by the commissioner of
24 the books and affairs of the licensee or registrant, or has
25 refused or failed, within a reasonable time, to furnish any
26 information or make any report that may be required by the
27 commissioner pursuant to this act.

1 (h) Is convicted of a felony, or any misdemeanor of which an
2 essential element is fraud.

3 (i) Refuses or fails to pay, within a reasonable time, those
4 expenses assessed to the licensee or registrant pursuant to this
5 act.

6 (j) Fails to make restitution after having been ordered to
7 do so by the commissioner or an administrative agency, or fails
8 to make restitution or pay damages to persons injured by the
9 licensee's or registrant's business transactions after having
10 been ordered to do so by a court.

11 (k) Fails to make a mortgage loan pursuant to, and in
12 accordance with, a written commitment to make a mortgage loan
13 issued to, and accepted by, a person when the person has timely
14 and completely satisfied all the conditions of the commitment
15 prior to the expiration of the commitment.

16 (l) ACCEPTS A FEE TO GUARANTEE A SPECIFIED RATE OF INTEREST
17 ON A MORTGAGE LOAN UNLESS THE GUARANTEE IS IN WRITING.

18 Sec. 25. This act does not apply to ANY OF THE FOLLOWING:

19 (a) ~~Any~~ A depository financial institution whether or not
20 the depository financial institution is acting in a capacity of a
21 trustee or fiduciary.

22 (b) A salesperson acting as an agent for a residential
23 builder or residential maintenance and alteration contractor, or
24 a residential builder or residential maintenance and alteration
25 contractor licensed under article 24 of the occupational code,
26 Act No. 299 of the Public Acts of 1980, being sections 339.2401
27 to 339.2412 of the Michigan Compiled Laws, when a mortgage is

1 made or negotiated in connection with the sale or financing of a
2 residential structure or improvement constructed or improved by
3 that residential builder or residential maintenance and alter-
4 ation contractor.

5 (c) A real estate broker or real estate salesperson licensed
6 under article 25 of THE OCCUPATIONAL CODE, Act No. 299 of the
7 Public Acts of 1980, being sections 339.2501 to 339.2515 of the
8 Michigan Compiled Laws, and who is not a mortgage broker, mort-
9 gage lender, or mortgage servicer, or who only acts as a mortgage
10 broker in connection with a real estate sale or lease and acts
11 without additional compensation beyond the customary commission
12 on such sales or leases.

13 (d) A real estate salesperson who acts for a real estate
14 broker as a mortgage broker, mortgage lender, or mortgage serv-
15 icer and who receives for such services compensation only from
16 the real estate broker for which the salesperson is an agent or
17 employee.

18 (e) A person licensed under Act No. 125 of the Public Acts
19 of 1981, being sections 493.51 to 493.81 of the Michigan Compiled
20 Laws, not making, brokering, or servicing mortgage loans as
21 described in this act in a 12-month period from July 1 to June
22 30.

23 (f) A home improvement installment contract entered into
24 pursuant to the home improvement finance act, Act No. 332 of the
25 Public Acts of 1965, being sections 445.1101 to 445.1431 of the
26 Michigan Compiled Laws.

1 (g) Agencies or corporate instrumentalities of the United
2 States and of this state and its political subdivisions,
3 including, BUT NOT LIMITED TO, the public employees' retirement
4 system.

5 (h) A mortgage lender ~~which~~ THAT makes 10 or fewer mort-
6 gage loans in a 12-month period from July 1 to June 30.

7 (i) A mortgage servicer ~~which~~ THAT services 10 or fewer
8 mortgage loans in a 12-month period from July 1 to June 30.

9 (j) A mortgage servicer ~~which~~ THAT services only 75 or
10 fewer land contracts, of which 10 or fewer require the collection
11 of money for the payment of taxes or insurance. Neither this
12 subdivision nor subdivision (i) ~~shall exempt~~ EXEMPTS a mortgage
13 servicer who collects money for the payment of taxes or insurance
14 from the provisions of Act No. 125 of the Public Acts of 1966,
15 being sections 565.161 to 565.163 of the Michigan Compiled Laws.
16 All fees shall be returned to any mortgage servicer described in
17 this subdivision who applied for a license and paid the fees
18 required by this act and who on ~~the effective date of this~~
19 ~~subdivision~~ DECEMBER 27, 1988 is exempted from licensing.

20 (k) An individual licensed to practice law in this state and
21 not engaged in the business of negotiating loans secured by real
22 property, when the individual renders services in the course of
23 his or her practice as an attorney-at-law.

24 (l) A person who makes mortgage loans exclusively for the
25 benefit of employees of that person if the proceeds of the loan
26 are used to assist the employee in meeting his or her housing
27 needs.

1 (m) A person acting as a fiduciary with respect to any
2 employee pension benefit plan qualified under the internal reve-
3 nue code who makes mortgage loans solely to plan participants
4 from plan assets.

5 (n) A mortgage broker, A mortgage lender, or a mortgage
6 servicer ~~which~~ THAT is a subsidiary or affiliate of a deposi-
7 tory financial institution or a subsidiary or affiliate of a
8 holding company of a depository financial institution.

9 Sec. 29. (1) A person or any owner, partner, member, offi-
10 cer, director, trustee, employee, agent, broker, or their repre-
11 sentative acting on the authority of such person who willfully or
12 intentionally does any of the following is guilty of a misde-
13 meanor ~~and shall be fined~~ PUNISHABLE BY A FINE OF not more than
14 \$5,000.00, or ~~imprisoned~~ IMPRISONMENT for not more than 3
15 years, or both:

16 (a) Engages in this state in the business of a mortgage
17 broker, mortgage lender, or mortgage servicer without a license
18 or registration required under this act.

19 (b) Transfers or assigns a mortgage loan, other than a land
20 contract not considered to be an equitable mortgage, or a secur-
21 ity directly representing an interest in 1 or more mortgage
22 loans, other than land contracts not considered to be equitable
23 mortgages, ~~prior to~~ BEFORE the disbursement of 75% or more of
24 the proceeds of the mortgage loan to, or for the benefit of, the
25 borrower.

26 (c) Transfers or assigns a mortgage loan or a security
27 representing an interest in 1 or more mortgage loans to an

1 individual investor unless 1 or more of the following ~~applies~~
2 APPLY:

3 (i) The transfer or assignment is made through a
4 broker-dealer ~~which~~ THAT is a member of the New York stock
5 exchange.

6 (ii) The transfer or assignment is made through a
7 broker-dealer who meets all of the following criteria:

8 (A) The broker-dealer is ~~licensed~~ REGISTERED pursuant to
9 the uniform securities act, Act No. 265 of the Public Acts of
10 1964, being sections 451.501 to 451.818 of the Michigan Compiled
11 Laws.

12 (B) The broker-dealer is not an affiliate of the mortgage
13 lender unless the person acquired the broker-dealer ~~license~~
14 REGISTRATION, directly or indirectly, ~~prior to~~ BEFORE
15 September 1, 1987 pursuant to ~~the uniform securities act,~~ Act
16 No. 265 of the Public Acts of 1964, was affiliated with a mort-
17 gage lender ~~prior to~~ BEFORE September 1, 1987, and has continu-
18 ously maintained that ~~license~~ REGISTRATION subsequent to
19 September 1, 1987. For purposes of this ~~subdivision~~
20 SUBPARAGRAPH, if an aggregate of more than 10% of the outstanding
21 voting stock or interest in a corporation, unincorporated organi-
22 zation, partnership, or other legal entity that is a
23 broker-dealer or mortgage lender is sold, transferred, assigned,
24 or otherwise conveyed subsequent to September 1, 1987, the
25 ~~license~~ REGISTRATION shall be considered to not have been con-
26 tinuously maintained.

1 (C) The broker-dealer acquired the mortgage loan or security
2 on a firm commitment.

3 (iii) The transfer or assignment is made to a person who the
4 transferor or assignor believes, or has reasonable grounds to
5 believe, is 1 of the following:

6 (A) A business entity having either net income from opera-
7 tions after taxes in excess of \$100,000.00 in its last fiscal
8 year or its latest 12-month period, or a net worth in excess of
9 \$1,000,000.00 at the time of purchase.

10 (B) An individual who, after the purchase, has an investment
11 of more than \$50,000.00 in such loans or securities, including
12 installment payments to be made within 1 year after purchase by
13 the individual, has either personal income before taxes in excess
14 of \$100,000.00 for his or her last fiscal year or latest 12-month
15 period and is capable of bearing the economic risk, or net worth
16 in excess of \$1,000,000.00, and has the knowledge and experience
17 in financial and business matters that he or she is capable of
18 evaluating the merits and risks of the prospective investment, or
19 has obtained the advice of an attorney, certified public accoun-
20 tant, or investment advisor registered under the investment
21 ~~advisors~~ ADVISERS act of 1940, TITLE II OF CHAPTER 686,
22 54 STAT. 847, 15 U.S.C. 80b-1 TO 80b-21, or an investment advisor
23 registered under ~~the uniform securities act,~~ Act No. 265 of the
24 Public Acts of 1964, ~~being sections 451.501 to 451.818 of the~~
25 ~~Michigan Compiled Laws,~~ with respect to the merits and risks of
26 the prospective investment.

1 (iv) A transferor or assignor does not maintain its
2 principal place of business in this state and the transferee or
3 assignee is not a resident of this state ~~nor maintains~~ AND DOES
4 NOT MAINTAIN its principal place of business in this state.

5 (2) If the commissioner finds that a licensee or registrant
6 has violated this act or the rules promulgated under this act,
7 the commissioner may DO 1 OR BOTH OF THE FOLLOWING:

8 (a) Assess a civil fine against a licensee, registrant, or a
9 person who controls the licensee or registrant of not more than
10 \$1,000.00 for each violation, except that the licensee, regis-
11 trant, or a person shall not be fined more than \$10,000.00 for a
12 transaction resulting in more than 1 violation, plus the costs of
13 investigation.

14 (b) Suspend or revoke a license or registration or refuse to
15 issue or renew a license.

16 (3) The civil fine may be sued for and recovered by and in
17 the name of the commissioner and may be collected and enforced by
18 summary proceedings by the attorney general. Each individual
19 injured by a violation of this act or a rule shall constitute a
20 separate violation. In determining the amount of a fine, whether
21 to suspend or revoke a license or registration, or whether to
22 refuse to issue or renew a license, the commissioner shall con-
23 sider the extent to which the violation was a knowing and willful
24 violation, the extent of the injury suffered because of the vio-
25 lation, the corrective action taken by the licensee or registrant
26 to ensure that the violation will not be repeated, and the record
27 of the licensee or registrant in complying with this act. Any

1 proceedings under this subsection shall be subject to the
2 procedures of the administrative procedures act of 1969, Act
3 No. 306 of the Public Acts of 1969, being sections 24.201 to
4 24.328 of the Michigan Compiled Laws.

5 (4) A licensee, registrant, or a person who controls a
6 licensee or registrant, who violates a section of this act or a
7 rule promulgated under this act resulting in an injury to 1 or
8 more individuals, shall be required to make restitution to each
9 injured individual. The license or registration of the person
10 required to make restitution may be suspended by the commissioner
11 until the restitution is made.

12 (5) Subsection (2) ~~shall~~ DOES not apply to a violation of
13 this act ~~which~~ THAT results from a bona fide error ~~which~~ THAT
14 occurs notwithstanding the adoption and observance of reasonable
15 procedures intended to prevent the occurrence of the error.