

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/3/21
A Bill

SENATE BILL 149

By: Senator J. Dismang
By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT; TO MODIFY CERTAIN DEFINITIONS UNDER THE FAIR MORTGAGE LENDING ACT; TO CLARIFY THE QUALIFICATIONS FOR LICENSURE UNDER THE FAIR MORTGAGE LENDING ACT; TO PROVIDE A PROCESS TO ALLOW A LOAN OFFICER TO WORK REMOTELY; TO MODIFY THE PROCESS FOR A CHANGE OF NAME OR ADDRESS OF A LICENSEE UNDER THE FAIR MORTGAGE LENDING ACT; TO REQUIRE A LICENSEE TO ESTABLISH CYBERSECURITY POLICY AND PROCEDURE; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE FAIR MORTGAGE LENDING ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-39-502(3), concerning the definition of "branch office" under the Fair Mortgage Lending Act, is amended to read as follows:

(3) "Branch office" means a location that is separate and distinct from the licensee's principal place of business and includes ~~a net branch or~~ any location from which business is conducted under the license or in the name of the mortgage broker, mortgage banker, or mortgage servicer:

(A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;



(B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued; or

(C) Which, due to the actions of any employee, associate, loan officer, or transitional loan officer of the licensee, may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;

SECTION 2. Arkansas Code § 23-39-502(13), concerning the definition of "managing principal" under the Fair Mortgage Lending Act, is amended to read as follows:

(13)(A) "Managing principal" means a person who meets the requirements of § 23-39-508 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer.

(B) "Managing principal" includes a qualifying individual;

SECTION 3. Arkansas Code § 23-39-502(17), concerning the definition of "mortgage servicer" under the Fair Mortgage Lending Act, is amended to read as follows:

(17)(A) "Mortgage servicer" means a person that receives or has the right to receive from or on behalf of a borrower:

~~(A)(i)~~ Funds or credits in payment for a mortgage loan; or

~~(B)(ii)~~ The taxes or insurance associated with a mortgage loan.

(B) In the case of a home equity conversion mortgage or a reverse mortgage, "mortgage servicer" includes a person that makes a payment to the borrower;

SECTION 4. Arkansas Code § 23-39-503(d)(1), concerning the license of a loan officer under the Fair Mortgage Lending Act, is amended to read as follows:

(d)(1)~~(A)~~ The license of a loan officer or a transitional loan officer terminates when the loan officer's or transitional loan officer's employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.

~~(B) A transitional loan officer license terminates when the transitional loan officer's employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.~~

SECTION 5. Arkansas Code § 23-39-505(a)(4), concerning the information required by an applicant for a license under the Fair Mortgage Lending Act, is amended to read as follows:

(4) In addition to any other information required under this subchapter or rules adopted by the commissioner, the application shall contain information the commissioner deems necessary and shall include the following:

(A) For a license as a mortgage banker, mortgage broker, or mortgage servicer:

(i) The applicant's name, address, and Social Security number federal employer identification number;

~~(B)(i)~~ (ii) The applicant's form of business and place of organization, including without limitation:

~~(i)(a)~~ (a) A copy of the applicant's organizational and governance documents; and

~~(i)(b)~~ (b) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

~~(C)(i)(iii)~~ (iii) The applicant's proposed method of ~~and~~ locations for doing business, if applicable including whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;

~~(ii) The applicant's proposed method of doing business shall include whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;~~

~~(D)(i)(iv)~~ (iv) The applicant's proposed locations for doing business;

(v) The qualifications, business history, and financial condition of the applicant and a managing principal of the

~~applicant;~~ and

(vi) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant; and

(B) For a license as a loan officer, transitional loan officer, or managing principal of an applicant:

(i) The applicant's name, address, and Social Security number; and

(ii) The qualifications, ~~and~~ business history, and financial condition of the individual or managing principal of an applicant, ~~of persons under subdivision (a)(4)(D)(i) of this section shall include~~ including:

(a) A description of an injunction or administrative order, including a denial to engage in a regulated activity by any state or federal authority that had jurisdiction over the applicant;

(b) A Disclosure of a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services;

(c) A Disclosure of a felony conviction; and

(d) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check; ~~and.~~

~~(E) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant.~~

SECTION 6. Arkansas Code § 23-39-505(d), concerning the designation of a managing principal under the Fair Mortgage Lending Act, is amended to read as follows:

(d) Each applicant for a license as a mortgage broker, mortgage banker, or mortgage servicer shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

SECTION 7. Arkansas Code § 23-39-505(h), concerning the qualifications of a loan officer under the Fair Mortgage Lending Act, is repealed.

~~(h) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall be deemed to have met the qualifications for licensure as a loan officer upon filing a written application with the commissioner in the form prescribed by the commissioner and payment of the applicable fee.~~

SECTION 8. Arkansas Code § 23-39-506(c), concerning the renewal of a loan officer license under the Fair Mortgage Lending Act, is amended to read as follows:

(c)(1) Each licensed loan officer wishing to renew a license shall:

~~(1)(A)~~ File an application with the commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

~~(2)(B)~~ Comply with the continuing education requirements as required by rules promulgated by the commissioner; and

~~(3)(C)~~ Pay an annual renewal fee of fifty dollars (\$50.00).

(2) If an initial loan officer license is issued between November 1 through December 31 of the calendar year, the loan officer is not required to file a renewal application until the subsequent renewal period.

SECTION 9. Arkansas Code § 23-39-509(d), concerning the business location of a mortgage broker, mortgage banker, or mortgage servicer under the Fair Mortgage Lending Act, is amended to read as follows:

(d)(1) A principal place of business or branch office from which a mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan activity or business shall be a physical address.

(2) Mortgage loan activity or business includes without limitation the address appearing on business cards, stationery, promotional materials, or advertising.

(3) The commissioner may by rule or order impose terms and conditions under which a loan officer may conduct mortgage loan activity or business from a location that is not licensed under this subchapter as a

principal place of business or branch office.

SECTION 10. Arkansas Code § 23-39-509(e), concerning notice of a change of address that is required by a mortgage broker, mortgage banker, or mortgage servicer under the Fair Mortgage Lending Act, is amended to read as follows:

(e)(1) ~~A mortgage banker, mortgage broker, or mortgage servicer shall report a change of address of the principal place of business, a branch office, or a location in which the files pertaining to mortgage loan transactions are maintained within thirty (30) days after the change~~ not use any name or address to conduct mortgage loan activity or business other than the name and address specified on the license issued by the commissioner.

~~(2)(A) A licensee that does not comply with subdivision (e)(1) of this section shall pay a late fee of two hundred fifty dollars (\$250)~~ mortgage broker, mortgage banker, or mortgage servicer may change the name of the licensee or address of the principal place of business or branch office specified on the most recent filing with the commissioner if:

(A)(i) At least thirty (30) calendar days before the change, the licensee files a notice of the change with the commissioner.

(ii) If necessary, the licensee shall provide a bond rider or endorsement, or addendum, as applicable, to the surety bond on file with the commissioner that reflects the new name or change of address of the licensee's principal place of business; and

~~(B) All or part of the late fee may be waived by the commissioner for good cause~~ The commissioner does not disapprove the name change or the change of address in writing or request additional information within the thirty-day time frame described in subdivision (e)(2)(A)(i) of this section.

~~(3) The commissioner may revoke or suspend the license of a mortgage broker, mortgage banker, or mortgage servicer who fails to pay a late fee assessed under subdivision (e)(2) of this section.~~

SECTION 11. Arkansas Code § 23-39-510, concerning the duties of a licensee under the Fair Mortgage Lending Act, is amended to add additional subsections to read as follows:

(d)(1) A mortgage broker, mortgage banker, or mortgage servicer

licensed or required to be licensed under this subchapter shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.

(2) A policy or procedure described in subdivision (d)(1) of this section shall be tailored to the size and sophistication of the mortgage broker, mortgage banker, or mortgage servicer.

(3) The commissioner may impose additional conditions by rule or order to clarify the requirements of a policy or procedure described in subdivision (d)(1) of this section.

(e) A mortgage broker, mortgage banker, or mortgage servicer shall establish, enforce, and maintain policies and procedures reasonably designed to achieve compliance with this subchapter and any other state law or rule or federal law or regulation that is applicable to any business the licensee is authorized to conduct in this state.

SECTION 12. Arkansas Code § 23-39-514(i)(2), concerning the authority of the Securities Commissioner to require an applicant or licensee to pay a fee for an examination under the Fair Mortgage Lending Act, is amended to read as follows:

(2) The applicant or licensee shall pay a fee for each examination under subdivision (i)(1) of this section, not to exceed one hundred fifty dollars (\$150) per examiner for each day or part of a day during which ~~any examiners are absent from the office of the commissioner for the purpose of conducting the~~ an examination is conducted.

/s/J. Dismang