

Regular Session, 2014

HOUSE BILL NO. 807

BY REPRESENTATIVE BARRAS

FINANCIAL INSTITUTIONS: Makes changes to residential mortgage brokers and lenders law

1 AN ACT

2 To amend and reenact R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(introductory
3 paragraph), 1088(D), (F), (G)(3)(introductory paragraph), and (J), 1088.2(A)(1) and
4 (3), 1088.3(A)(1) and (3), (C)(2)(b), and (D)(2), 1089(A), 1090(B)(1),
5 1092(B)(1)(e), (G), and (K), and 1099(F) and to enact R.S. 6:1083(11.1) and
6 1088(G)(3)(d), relative to mortgage servicers; to require that mortgage servicers be
7 licensed and regulated pursuant to the Louisiana Secure and Fair Enforcement of
8 Mortgage Licensing Act of 2009; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(introductory
11 paragraph), 1088(D), (F), (G)(3)(introductory paragraph), and (J), 1088.2(A)(1) and (3),
12 1088.3(A)(1) and (3), (C)(2)(b), and (D)(2), 1089(A), 1090(B)(1), 1092(B)(1)(e), (G), and
13 (K), and 1099(F) are hereby amended and reenacted and R.S. 6:1083(11.1) and
14 1088(G)(3)(d) are hereby enacted to read as follows:

15 §1082. Purpose

16 The Legislature of Louisiana does hereby declare that it is in the best interest
17 of the citizens of the state to protect consumers in the most important financial
18 investment most will make, the purchase of a home, by requiring the licensing and
19 regulation of residential mortgage lenders, brokers, ~~and originators,~~ and servicers.

20 The purpose of this Chapter is to promote the safety and welfare of the people of the
21 state by providing for regulatory oversight and by establishing educational
22 requirements in a professional field in which unqualified individuals may injure or
23 mislead the public.

1 §1083. Definitions

2 As used in this Chapter:

3 * * *

4 (11.1) "Mortgage servicing" means collecting or remitting payment for
5 another, or the right to collect or remit payments for another, of any of the following:
6 principal, interest, tax, insurance, or other payment under a mortgage loan.

7 * * *

8 (18) "Residential loan transaction" means any agreement by a consumer with
9 a mortgage broker, mortgage loan originator, mortgage loan servicer, or mortgage
10 lender in connection with a residential mortgage loan.

11 * * *

12 (20) "Residential mortgage lending activity" means an activity, including
13 electronic activity, engaged in for compensation or with the expectation of
14 compensation in connection with a residential loan transaction, including the
15 origination or funding of a residential mortgage loan and the negotiation and
16 placement, or offering to negotiate, place, or fund a residential mortgage loan for
17 another person or servicing a mortgage loan.

18 * * *

19 §1086. Licensure requirement

20 A. Except as otherwise provided in Subsection B of this Section, beginning
21 on July 31, 2009, and unless otherwise exempt pursuant to this Chapter, no person
22 shall engage in any residential mortgage lending activity in this state without first
23 obtaining and maintaining annually the following:

24 (1) A license and registration as a mortgage loan originator, or a license as
25 a mortgage lender or broker, or mortgage servicer.

26 * * *

27 §1087. Exemptions; annual registration statement; fees

28 * * *

1 F. The following employers and their employees shall be exempt from the
2 provisions of this Part applicable to residential mortgage lenders ~~and~~ residential
3 mortgage brokers and mortgage servicers:

4 * * *

5 §1088. Application for licensure; surety bond

6 * * *

7 D. To comply with the requirements of this Section, an applicant for a
8 mortgage lender, ~~or mortgage broker license, or mortgage servicer~~ shall furnish the
9 required information as to each owner and member if the applicant is a partnership
10 or limited liability company, each officer, director, and direct or indirect owner of
11 ten percent or more of applicant's outstanding shares if the applicant is a corporation,
12 and each settlor, trustee, and beneficiary if the applicant is a trust.

13 * * *

14 F. Notwithstanding any other law to the contrary, the commissioner may not
15 issue a mortgage lender license, ~~or a mortgage broker license, or a mortgage service~~
16 license unless the commissioner makes the minimum findings provided in
17 Paragraphs (E)(1), (2), (3), and (4) of this Section, and as to each owner, partner, and
18 member if the applicant is a partnership or a limited liability company, each officer,
19 director, and direct or indirect owner of ten percent or more of the outstanding shares
20 if the applicant is a corporation, and each settlor, trustee, and beneficiary if the
21 applicant is a trust.

22 G.

23 * * *

24 (3) The required amount of the surety bond shall be determined by
25 information in a report submitted by an applicant or licensee as prescribed by the
26 commissioner. The total dollar amount of the original outstanding principal balance
27 of all residential mortgage loans serviced or originated by the applicant secured by
28 immovable property located in this state, including all such loans originated by
29 mortgage loan originators employed by the applicant during the previous calendar

1 year and reported pursuant to this Subsection shall be used to determine the amount
2 of the bond. The required amount of the bond shall be determined by information
3 in a report of total loan volume submitted by the applicant as prescribed by the
4 commissioner. Total loan volume of the applicant shall be calculated by adding all
5 of the following:

6 * * *

7 (d) The total outstanding principal balance as of the end of the previous
8 calendar year for all residential mortgage loans serviced.

9 * * *

10 J. An applicant for a mortgage originator license who is employed by, or is
11 an exclusive agent for, a juridical person engaging in residential mortgage lending
12 activities as a licensed mortgage broker, ~~or mortgage lender, or mortgage servicer~~
13 may satisfy the requirement of furnishing a surety bond by submitting evidence in
14 a form and manner satisfactory to the commissioner that his employer or principal
15 has obtained a surety bond which satisfies the requirements of this Section.
16 Notwithstanding any provision of law to the contrary, a mortgage originator whose
17 license remains in a status of inactive or any other status which would not allow
18 them to originate mortgage loans shall not be required to maintain the surety bond
19 as required by this Section until such time as their license is returned to a status
20 which allows them to originate mortgage loans.

21 * * *

22 §1088.2. Application for licensure; application and renewal fees

23 A. The application shall be accompanied by the following nonrefundable
24 fees as determined by and payable to the commissioner:

25 (1) In the case of an application for a license to act as a mortgage lender, a
26 mortgage broker, mortgage servicer, or both, a license fee in an amount not to exceed
27 four hundred dollars.

28 * * *

1 (3) An annual license renewal fee for each person licensed as a mortgage
2 broker, ~~or mortgage lender, or mortgage servicer~~ in an amount not to exceed three
3 hundred dollars.

4 * * *

5 §1088.3. Application for renewal of license; restriction; late renewal fees

6 A.(1) Each person licensed as a mortgage broker, ~~or mortgage lender, or~~
7 mortgage servicer shall submit an annual license renewal application on or before
8 December thirty-first of each year in a manner and form prescribed by the
9 commissioner.

10 * * *

11 (3) An annual renewal application shall be accompanied by the required
12 annual license renewal fee pursuant to R.S. 6:1088.1. An annual license renewal
13 application submitted after December thirty-first and before March first of the
14 following year shall be charged an annual license renewal late fee of two hundred
15 dollars for residential mortgage lenders, ~~and brokers, and servicers,~~ and fifty dollars
16 for mortgage loan originators, in addition to the annual license renewal fee.

17 * * *

18 C.

19 * * *

20 (2) The commissioner shall not renew a residential mortgage broker, ~~or~~
21 lender, or servicer license for which an application for license renewal is submitted
22 for the year 2010, and shall not renew any residential mortgage lender or broker
23 license for which an application for license renewal is submitted for any year
24 thereafter, unless the commissioner finds at a minimum:

25 * * *

26 (b) The applicant for renewal of a residential mortgage, ~~lender or broker, or~~
27 servicer license is in compliance with all final or uncontested orders of, and consent
28 agreements with the commissioner, including but not limited to, the payment of all
29 fees, penalties, or refunds.

1 D.

2 * * *

3 (2) The license of a mortgage loan broker, ~~or lender, or servicer~~ failing to
4 satisfy the minimum standards for annual license renewal in Paragraph (C)(2) of this
5 Section shall expire on December thirty-first.

6 * * *

7 §1089. Name or location changes and closures; fees

8 A.(1) No residential mortgage lender, ~~or originator, or servicer~~ shall conduct
9 the residential mortgage lending activities provided for in this Chapter under any
10 name other than the one stated in its current record of information in the licensing
11 system.

12 (2) A residential mortgage lender or servicer shall notify the commissioner
13 of a change in the location or name of the business or the addition of offices by
14 submitting such information to the licensing system prior to the change. A notice of
15 change of location or name or addition of offices shall be accompanied by a filing
16 fee of one hundred dollars.

17 (3) A residential mortgage lender or servicer shall notify the commissioner
18 of the closing of any office by submitting such information to the licensing system
19 and within thirty days of such closure.

20 * * *

21 §1090. Restrictions

22 * * *

23 B.(1) No person shall acquire or control a license to make, service, or broker
24 residential mortgage loans through the acquisition or control of fifty-one percent or
25 more of the ownership interest in a licensee without first having obtained written
26 approval from the commissioner, pursuant to an application for a change of control
27 in ownership of the licensee, filed in the manner and on a form prescribed by the
28 commissioner and accompanied by a fee of three hundred dollars. Any person who
29 acquires controlling interest in a licensee without first having filed an application for

1 change of control with the commissioner shall be deemed to be operating without
2 proper authority under this Chapter and is subject to the penalties of R.S. 6:1092(C).

3 * * *

4 §1092. Suspension and revocation of licensure; commissioner's interpretations;
5 prohibitions

6 * * *

7 B.(1) Notwithstanding any other law to the contrary, and in addition to any
8 other authority conferred upon the commissioner by any other provision of law, the
9 commissioner may upon discovery order an immediate suspension of the license of
10 any person licensed pursuant to this Chapter who:

11 * * *

12 (e) Has his license to act as a residential mortgage broker, residential
13 mortgage lender, mortgage servicer, or residential mortgage loan originator
14 suspended or revoked in this or another jurisdiction.

15 * * *

16 G. Any person who acts as a mortgage broker, mortgage lender, mortgage
17 servicer, or mortgage loan originator without complying with the licensing
18 provisions of this Chapter shall be subject to forfeiture of the compensation
19 attributable to and received by the mortgage broker, mortgage lender, mortgage
20 servicer, or mortgage loan originator in connection with residential mortgage lending
21 activity occurring on or after August 15, 2001; provided that the forfeiture of such
22 compensation by the mortgage broker, mortgage lender, mortgage servicer, or
23 mortgage loan originator shall not impair the validity of the note and mortgage.

24 * * *

25 K. Any residential mortgage lender, ~~or broker, or servicer~~ whose license
26 under this Chapter has been revoked for any reason may not reapply for a license
27 until at least five years have elapsed from the date of the order of revocation, unless
28 the commissioner, in his sole discretion, prescribes an earlier or later date. For
29 purposes of this Subsection, the order shall be considered to be the commissioner's

1 notification of revocation of the license. For the purposes of this Subsection,
2 mortgage lender, ~~or mortgage broker,~~ or mortgage servicer shall include the licensee,
3 owners of ten percent or more, and its members if the licensee is a limited liability
4 company, its partners if the licensee is a partnership, its officers and directors, if the
5 licensee is a corporation, and any other person determined by the commissioner, in
6 his sole discretion, to be closely related to the mortgage lender, ~~or broker,~~ or
7 servicer.

8 * * *

9 §1099. Criminal penalties

10 * * *

11 F. A lender, broker, ~~or originator,~~ or servicer who knowingly operates
12 without a license or while not exempt from the provisions of this Chapter shall be
13 guilty of a misdemeanor and upon conviction shall be subject to a fine not less than
14 five hundred dollars and not more than one thousand dollars, or to imprisonment not
15 exceeding one year, or both.

16 Section 2. This Act shall become effective January 1, 2015.

17 Section 3. Persons required to obtain a license solely as a result of the provisions of
18 this Act shall have until June 30, 2015 to obtain the required license.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Barras

HB No. 807

Abstract: Adds licensure requirement for persons engaged in residential mortgage servicing.

Present law provides for the purpose of the La. Secure and Fair Enforcement of Mortgage Licensing Act of 2009 (SAFE Act).

Proposed law retains present law and makes the purpose applicable to mortgage servicers.

Present law defines certain terms in present law.

Proposed law amends the definition of "residential loan transaction" and "residential mortgage lending activity" and adds the definition of "mortgage servicing".

Present law provides licensure requirements under the SAFE Act. Proposed law subjects mortgage servicers to the same licensure requirements.

Present law provides exemptions to the act. Proposed law subjects mortgage servicers to the same exemptions.

Present law provides for the application, renewal, and surety bond requirements of the act. Proposed law subjects mortgage servicers to the requirements.

Proposed law requires persons engaged in residential mortgage servicing to the Louisiana SAFE Mortgage Licensing Act.

Persons required to obtain a license solely because of the provisions of the proposed law shall have until June 30, 2015, to do so.

Effective January 1, 2015.

(Amends R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(intro. para.), 1088(D), (F), (G)(3)(intro. para.), and (J), 1088.2(A)(1) and (3), 1088.3(A)(1) and (3), (C)(2)(b), and (D)(2), 1089(A), 1090(B)(1), 1092(B)(1)(e), (G), and (K), and 1099(F); Adds R.S. 6:1083(11.1) and 1088(G)(3)(d))