

MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT
Act 173 of 1987

AN ACT to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 2008, Act 66, Imd. Eff. Apr. 3, 2008;—Am. 2009, Act 76, Eff. July 31, 2010

The People of the State of Michigan enact:

445.1651 Short title.

Sec. 1. This act shall be known and may be cited as the "mortgage brokers, lenders, and servicers licensing act".

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1651a Definitions.

Sec. 1a. As used in this act:

(a) "Affiliate" means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) "Board" means the mortgage industry advisory board created in section 33.

(c) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of licensing and regulatory affairs or his or her authorized agent.

(d) "Construction loan" means a mortgage loan to construct a 1-to-4 family dwelling, that is approved and closed before completion of the construction of the improvement on the real property.

(e) "Control person" means a director or executive officer of a licensee or registrant or an individual 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.

(f) "Depository financial institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union, or an entity of the federally chartered farm credit system.

(g) "Employee" means an individual who meets both of the following:

(i) Has an employment relationship acknowledged by that individual and the licensee or registrant that engages that individual to originate mortgage loans.

(ii) Is treated as an employee by the licensee or registrant that engages that individual to originate mortgage loans for compliance with federal income tax laws.

(h) "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 any other individual who holds any other similar position.

(i) "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

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

(k) "Individual investor" means a person that resides in this state or has its principal place of business in this state. The term does not include a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, 15 USC 80a-1 to 80a-64, pension or profit sharing plan if the assets of the plan are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or a mortgage lender or mortgage servicer.

- (l) "License" means a license issued under this act.
- (m) "Licensed loan officer" means a loan officer who is licensed as a mortgage loan originator under the mortgage loan originator licensing act.
- (n) "Licensee" means a person licensed or required to be licensed under this act.
- (o) "Loan officer" means an individual who is an employee or agent of a mortgage broker, mortgage lender, or mortgage servicer; who originates 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.
- (p) "Mortgage broker" means a person that, directly or indirectly, does 1 or both of the following:
- (i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.
 - (ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans.
- (q) "Mortgage lender" means a person that, directly or indirectly, makes or offers to make mortgage loans.
- (r) "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families. Mortgage loan does not include any of the following:
- (i) A home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.
 - (ii) A loan transaction in which the proceeds are not used primarily for a personal, family, or household purpose.
- (s) "Mortgage servicer" means a person that, directly or indirectly, services or offers to service mortgage loans.
- (t) "Originate" means any of the following:
- (i) To negotiate, arrange, or offer to negotiate or arrange a mortgage loan between a mortgage lender and 1 or more individuals.
 - (ii) To place, assist in placing, or find a mortgage loan for 1 or more individuals.
- (u) "Person" means an individual, corporation, limited liability company, partnership, association, governmental entity, or any other legal entity.
- (v) "Real estate broker" means a broker or associate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.
- (w) "Real estate salesperson" means a salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.
- (x) "Register" means filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in this state and the payment of any fees required under this act, along with the other documents, proofs, and fees required by the commissioner.
- (y) "Registrant" means a person that is registered under section 6 or required to register under section 6.
- (z) "Secondary mortgage loan act" means the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.
- (aa) "Service" means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2002, Act 391, Imd. Eff. May 30, 2002;—Am. 2008, Act 66, Imd. Eff. Apr. 3, 2008;—Am. 2009, Act 13, Imd. Eff. Apr. 9, 2009;—Am. 2009, Act 76, Eff. July 31, 2010;—Am. 2012, Act 442, Imd. Eff. Dec. 27, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

445.1652 Mortgage broker, mortgage lender, or mortgage servicer; license or registration required; exemption; application; compensation or other remuneration; words contained in name or assumed name; "employee" defined.

Sec. 2. (1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license under this act or registering under section 6, unless 1 or more of the following apply:

(a) The person is providing loan officer services as an employee or agent of only 1 mortgage broker, mortgage lender, or mortgage servicer and a licensed loan officer if that licensure is required under the mortgage loan originator licensing act.

(b) The person is exempted from the act under section 25.

(c) The person is licensed as a class I licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(d) The individual is an employee of a professional employer organization, as that term is defined in section 113 of the Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting as a residential mortgage originator of only 1 mortgage broker or mortgage lender. The mortgage broker or mortgage lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 4.

(2) A person that is licensed to make regulatory loans under the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, or is licensed to make secondary mortgage loans under the secondary mortgage loan act, and is registered with the commissioner shall file with the commissioner an application for a license under section 3(1) or shall discontinue all activities that are subject to this act.

(3) A loan officer shall not directly or indirectly receive any compensation, commission, fee, points, or other remuneration or benefits for originating a mortgage loan unless both of the following are met:

(a) The loan officer is a licensed loan officer.

(b) The compensation, commission, fee, points, or other remuneration or benefits are paid by the licensee or registrant for which the loan officer originated that mortgage loan.

(4) A mortgage broker, mortgage lender, or mortgage servicer shall not directly or indirectly pay any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

(a) A loan officer who is not a licensed loan officer.

(b) A licensed loan officer who is not an employee or agent of that mortgage broker, mortgage lender, or mortgage servicer.

(5) A mortgage broker, mortgage lender, or mortgage servicer that is exempt from regulation under this act and is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company that does not maintain a main office or branch office in this state, shall register under section 6 or shall discontinue all activities subject to this act.

(6) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, the person subject to this act shall not include in its name or assumed name, the words "bank", "banker", "banking", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee or registrant to use the term "mortgage banker" or "mortgage banking" in its name or assumed name. A person subject to this act whose name or assumed name on January 1, 1995 contained a word prohibited by this section may continue to use the name or assumed name.

(7) As used in this section, "employee" means that term as defined in section 3401 of the internal revenue code, 26 USC 3401.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 159, Eff. Sept. 1, 1988;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2002, Act 4, Imd. Eff. Feb. 7, 2002;—Am. 2005, Act 113, Imd. Eff. Sept. 22, 2005;—Am. 2007, Act 179, Imd. Eff. Dec. 21, 2007;—Am. 2008, Act 59, Imd. Eff. Apr. 3, 2008;—Am. 2008, Act 328, Imd. Eff. Dec. 18, 2008;—Am. 2009, Act 76, Eff. July 31, 2010.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan Compiled Laws.

445.1652a-445.1652c Repealed. 2009, Act 76, Eff. July 31, 2010.

Compiler's note: The repealed sections pertained to services performed by employee or agent of licensee or registrant; procedures for loan officer registration renewal; and, written notice provided to commissioner by loan officer registrant.

445.1653 License or renewal; application; form; investigation; determination; issuance; indemnification.

Sec. 3. (1) An application for, or renewal of, a license shall be made in writing to the commissioner on a

form prescribed by the commissioner. If the commissioner determines after investigation that the experience, character, business reputation, and general fitness of the applicant and its officers, directors, shareholders, partners, and affiliates command the confidence of the public and warrant the belief that the applicant and its officers, directors, shareholders, partners, and affiliates will comply with the law and that grounds for revoking, suspending, or denying a license under this act do not exist, the commissioner shall issue a license to, or renew the license of, the applicant to act as a mortgage broker, mortgage lender, or mortgage servicer.

(2) A license issued under this section does not approve the use of or indemnify the licensee against claims for the improper use of the business name stated in the license.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1654 Proof of financial responsibility.

Sec. 4. (1) Except as otherwise provided in this section, at the time of filing an application for a license or renewal of a license, the applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(i) \$25,000.00 for an applicant who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan or who acts as a mortgage lender.

(ii) \$125,000.00 for an applicant who acts as a mortgage servicer.

(b) Provide proof of financial responsibility by 1 of the following:

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

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

(2) The bond or letter of credit deposited under subsection (1) shall be conditioned upon the conduct of the business in accordance with the provisions of this act and all rules promulgated by the commissioner, and the payment of all money that becomes due.

(3) In place of depositing a bond or letter of credit, an applicant may pay a nonrefundable administrative fee established by the commissioner not to exceed \$100.00 and furnish 1 of the following as proof of financial responsibility:

(a) Deposit with the state treasurer, under terms prescribed by the commissioner, obligations of the United States, or obligations which are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or any political subdivision of the United States, with a maturity date of 3 years or less, in an amount equal to, or greater than, the amount of the required bond. Interest earned under obligations shall accrue to the account of the applicant.

(b) Deposit with the state treasurer, under terms prescribed by the commissioner, a certificate of deposit of a federally insured financial institution with a maturity date of 3 years or less for an amount payable which is equal to, or greater than, the amount of the required bond and which is not available for withdrawal except by direct order of the commissioner. Interest earned under the certificate shall accrue to the account of the applicant.

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

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

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1655 Minimum net worth.

Sec. 5. A licensee who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee who

acts as a mortgage lender shall maintain a net worth of not less than \$25,000.00. A licensee who acts as a mortgage servicer shall maintain a net worth in an amount determined by the commissioner not exceeding \$100,000.00. Net worth shall be determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. Net worth shall be disclosed on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and shall be computed in accordance with generally accepted accounting principles. The following assets shall be excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than that of the applicant.

(b) Any asset except construction loans receivable, secured by first mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.

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

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

(e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1656 Registration required; applicability of certain provisions; licensing or registration of real estate broker or salesperson; improper use of business name.

Sec. 6. (1) The following shall register with the commissioner on a form prescribed by the commissioner:

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

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

(c) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, who acts as a mortgage broker for not more than 1 licensee or 1 registrant, or who acts as a mortgage broker, mortgage lender, or mortgage servicer only in connection with real estate sales in which the real estate broker or salesperson affiliated with the real estate broker is engaged and who receives for those services additional compensation beyond the customary commission on real estate sales.

(d) A mortgage broker, mortgage lender, or mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.

(2) A registrant is not required to comply with section 3, 4, or 5 and is not subject to annual examination by the commissioner.

(3) A mortgage broker, mortgage lender, or a mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution is not subject to section 29(1)(b) or (c).

(4) Notwithstanding section 25(m), a mortgage broker, mortgage lender, or a mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution may register and become subject to the provisions of the act applicable to registrants.

(5) If a real estate broker or real estate salesperson acts as a mortgage broker, mortgage lender, or mortgage servicer not in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, the real estate broker or real estate salesperson shall be licensed or registered as otherwise required under this act.

(6) A real estate broker or real estate salesperson, in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, who acts as a mortgage broker on 10 or fewer mortgage loans in any 12-month period from January 1 to December 31 and who receives for such services additional compensation beyond the customary commission on real estate sales shall be exempt from the registration or licensing requirements of this act for that 12-month period. If the

broker and all real estate salespersons affiliated with the broker in aggregate brokered more than 30 mortgage loans as described in this subsection in the same 12-month period from January 1 to December 31, then that broker shall obtain a license or shall register as required by this act.

(7) A registration accepted by the commissioner under this section does not approve the use of or indemnify the registrant against claims for the improper use of the business name stated in the registration.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2008, Act 72, Eff. Jan. 1, 2009.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1657 Expiration of registration or license; renewal; application; fee; limitation; financial statement.

Sec. 7. (1) A registration or license, unless it is renewed, shall expire December 31 of each year. A registration or license may be renewed by filing a registration or an application for license renewal and paying the annual operating fee for the succeeding year. The registration or application and payment shall be received by the commissioner on, or before, a date prescribed by the commissioner.

(2) Not later than 90 days after the close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) A form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant must represent to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2008, Act 72, Eff. Jan. 1, 2009.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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445.1658 Payment for investigation and annual operating fees; establishment of annual fee schedule; limitation; fees nonrefundable; action for delinquent payment; licensee or registrant report; penalties; establishment and administration of MBLSLA fund; basis for setting operating fee.

Sec. 8. (1) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for licensure under this act shall pay to the commissioner a fee for investigating the applicant and the minimum annual operating fee established by the commissioner in subsection (3). To renew a license that is not suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee established in subsection (3). At the time of filing a registration or a renewal of a registration, a registrant shall pay to the commissioner an annual operating fee established in subsection (3).

(2) If an initial or renewed license or registration described in subsection (1) will have an effective date within 6 months of the expiration date described in section 7, the initial or renewal annual operating fee for that license or registration is 1/2 of the annual operating fee.

(3) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the office of financial and insurance regulation's reasonably anticipated costs of administering and enforcing this act. Subject to subsection (2), the fees are as follows:

(a) For the investigation of an applicant for a license, a fee of not less than \$400.00 or more than \$1,000.00.

(b) Except as set forth in subdivision (c), a licensee or registrant annually shall pay an operating fee based

upon the number of closed mortgage loans the licensee or registrant brokered to other parties, the number of mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of loans serviced by the licensee or registrant as of December 31 of the previous calendar year. In the 1-year period beginning July 2, 1996, the operating fee shall be not less than \$250.00 and not more than \$2,500.00. Beginning July 2, 1997, in the discretion of the commissioner, subject to the limitation set forth in this subsection, the commissioner may increase the maximum operating fee at an annual rate of not more than 10% in the second, third, and fourth 1-year periods after the 1-year period beginning July 2, 1996, and in the fifth and subsequent years, at an annual rate of not more than the annual increase for the immediately preceding 12-month period in the Detroit consumer price index as reported by the United States department of labor. For purposes of this subdivision, "mortgage loan" includes only mortgage loans subject to this act.

(c) For amending or reissuing a license or registration, a fee of not less than \$15.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine the records of the licensee or investigate the licensee or registrant and the cost of independent investigators employed under section 20(1)(e).

(4) Fees received under this act are not refundable.

(5) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee or registrant for the recovery of the fees or penalties together with interest and costs.

(6) A licensee or registrant who fails to submit to the commissioner a report required under section 7 or section 21 is subject to a penalty of \$25.00 for each day the report is delinquent or \$1,000.00, whichever is less.

(7) A licensee or registrant whose license or registration renewal fee is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(8) The department of treasury shall establish and administer a restricted account in the general fund named the MBLSLA fund. The department of treasury shall credit to the account all fees collected under this act or under the commissioner's authority under this act, fees described in section 6a of the secondary mortgage loan act, MCL 493.56a, fees established under the mortgage loan originator licensing act, and money appropriated or received from any source. The department of treasury shall use the money in the account only to provide money to the commissioner to administer and enforce this act, the secondary mortgage loan act, and the mortgage loan originator licensing act and to pay other costs associated with the commissioner's regulatory obligations. Money in the account at the end of a state fiscal year shall not revert to the general fund but shall be carried over in the account to the next state fiscal year.

(9) The annual operating fee set by the commissioner under subsection (3)(b) shall be based upon information in reports filed under section 21.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1996, Act 210, Eff. July 2, 1996;—Am. 2008, Act 68, Imd. Eff. Apr. 3, 2008;—Am. 2008, Act 72, Eff. Jan. 1, 2009;—Am. 2008, Act 326, Imd. Eff. Dec. 18, 2008;—Am. 2009, Act 76, Eff. July 31, 2010.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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445.1659 Transfer or assignment of license or registration.

Sec. 9. A license shall not be transferred or assigned without the consent of the commissioner. The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee which is a corporation, or more than 25% of the interest in a licensee which is a partnership or other unincorporated association, shall be considered to be a transfer of the license. A registration shall not be transferred or assigned.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1660 Surrender, revocation, or suspension of license or registration; loss or destruction; affidavit.

Sec. 10. (1) A licensee or registrant may surrender a license or registration by delivering to the commissioner the license or registration with written notice that the licensee or registrant surrenders the license or registration. The surrender, revocation, or suspension of a license or registration under this act does not affect the licensee's or registrant's civil or criminal liability for acts committed before the surrender, revocation, or suspension. The surrender of a license or registration does not affect a proceeding to suspend or revoke a license or registration.

(2) Except as otherwise provided by law, a revocation, suspension, or surrender of a license or registration does not impair or affect the obligation of a preexisting contract between the licensee or registrant and another person.

(3) A licensee or registrant whose license or registration has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee or registrant surrenders the license or registration.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2008, Act 69, Imd. Eff. Apr. 3, 2008;—Am. 2009, Act 76, Eff. July 31, 2010.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1661 Powers of commissioner generally.

Sec. 11. (1) The commissioner shall exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in this state.

(2) In addition to the other powers granted to the commissioner by this act, the commissioner shall have all of the following powers:

(a) To promulgate reasonable rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement and administer this act.

(b) To deny an application for a license or registration.

(c) To conduct examinations and investigations of any person as necessary for the efficient enforcement of this act and the rules promulgated under this act.

(d) To advise the attorney general or the prosecuting attorney of a county in which a mortgage broker, mortgage lender, or mortgage servicer is conducting business that the commissioner believes a licensee, registrant, or other person is violating this act. The attorney general or prosecuting attorney may take appropriate legal action to enjoin the operation of the business of the mortgage broker, mortgage lender, or mortgage servicer or prosecute violations of this act.

(e) To bring an action in the Ingham county circuit court in the name and on behalf of this state against a licensee, registrant, or any other person that is participating in, or about to participate in, any unsafe or injurious practice or act in violation of this act or a rule promulgated under this act, to enjoin the person from participating in or continuing the practice or engaging in the act.

(f) To order a person to cease and desist from a violation of this act or a rule promulgated under this act under section 16.

(g) To suspend or revoke a license or registration under section 29.

(h) To require that restitution be made under section 29.

(i) To assess a civil fine under section 29.

(j) To censure a licensee or registrant.

(k) To issue an order to prohibit a person from being employed by, an agent of, or control person of a licensee or registrant under section 18a.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 2002, Act 391, Imd. Eff. May 30, 2002;—Am. 2008, Act 62, Imd. Eff. Apr. 3, 2008;—Am. 2009, Act 76, Eff. July 31, 2010.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 3d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1662 Notice of intention to enter order of license or registration, suspension or revocation, or refusal to issue license; hearing; final order.

Sec. 12. (1) The commissioner shall give notice to a licensee or registrant of intention to enter an order suspending or revoking that person's license or registration, or notice to an applicant of a refusal to issue a

license or registration, in writing and served personally or sent by certified mail to the licensee, registrant, or applicant.

(2) Within 20 days after the notice of the intention to enter an order suspending or revoking a license or registration, or a refusal to issue a license or registration under subsection (1), the licensee, registrant, or applicant may request a hearing to contest the order or refusal. If a hearing regarding suspension or revocation is not requested, the commissioner shall enter a final order regarding the suspension or revocation. A hearing shall be conducted under the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 2008, Act 62, Imd. Eff. Apr. 3, 2008;—Am. 2009, Act 76, Eff. July 31, 2010

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1663 Complaint; investigation; federal regulatory authority.

Sec. 13. (1) The attorney general, the commissioner, or any other person may file a complaint with the commissioner alleging that a person has violated this act or a rule promulgated or an order issued under this act. If the complaint is made by the commissioner, he or she shall designate 1 or more employees of the financial institutions bureau to act as the person making the complaint. Upon receipt of a complaint, the commissioner may begin an investigation pursuant to the provisions of this act.

(2) If a complaint is received against a registrant which is a subsidiary of a federally chartered depository financial institution, a copy of the complaint shall be immediately sent to the appropriate federal regulatory authority. The commissioner shall attempt to determine the disposition of the complaint and shall make no investigation of the complaint if the complaint is being adequately pursued by the appropriate federal regulatory authority.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Constitutionality: In *Wachovia Bank v. Watters*, 431 F.2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1664 Provisions applicable to investigation.

Sec. 14. All of the following shall apply to an investigation conducted under section 13:

(a) The employees or agents of the office of financial and insurance regulation shall complete the investigation within a reasonable period of time.

(b) If the investigation does not disclose evidence of a violation of this act or a rule promulgated or an order issued under this act, the commissioner shall not use the complaint in any subsequent decision to issue, renew, suspend, or revoke the license or suspend or revoke the registration of the person against which the complaint was filed. The commissioner shall forward the results of the investigation to the complainant and the person against whom the complaint was filed.

(c) In addition to any other action authorized by law, if the investigation discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the commissioner or the attorney general may prepare a formal complaint to be served on the person against which the allegations are made and shall provide a copy of the formal complaint to the complainant.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 2008, Act 63, Imd. Eff. Apr. 3, 2008;—Am. 2009, Act 76, Eff. July 31, 2010

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1665 Summary suspension of license or registration; order; affidavit; dissolution of summary suspension order; record.

Sec. 15. (1) After an investigation has been conducted pursuant to section 13, the commissioner may issue an order summarily suspending a license or registration pursuant to section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws, based on an affidavit by a person familiar with the facts set forth in the affidavit or, if appropriate, based upon an affidavit, on information and belief, that an imminent threat of financial loss or

imminent threat to the public welfare exists.

(2) Pursuant to a proceeding commenced under section 92 of Act No. 306 of the Public Acts of 1969, an administrative law hearings examiner shall grant a request to dissolve a summary suspension order unless the examiner finds that an imminent threat of financial loss or imminent threat to the public welfare exists which requires emergency action and continuation of the summary suspension order.

(3) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1666 Cease and desist order; hearing; violation; injunction.

Sec. 16. (1) After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1667 Remedies cumulative.

Sec. 17. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license shall be in addition to and not in place of an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license or registration, or any other legal action.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1668 Notice of hearing on complaint; service; informal conference; settlement; compliance; hearing.

Sec. 18. (1) After an investigation has been conducted and a formal complaint has been prepared pursuant to section 14(c), the commissioner shall serve upon the person against whom the complaint was filed, and the person who filed the complaint, a notice of a hearing on the complaint pursuant to section 71 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.271 of the Michigan Compiled Laws, and a notice of an opportunity to settle the complaint through an informal conference.

(2) A person upon whom service has been made pursuant to this section may request, within 15 days after the receipt of notice, an opportunity to settle a complaint in an informal conference. An informal conference shall be held only if the person against whom a complaint has been filed agrees to the informal conference. If an informal conference is held, the hearing on the complaint shall be postponed.

(3) An informal conference may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the person complained against and the commissioner. A settlement may include a

license or registration revocation or suspension, restitution, or a penalty provided for in this act.

(4) This act does not prevent a person against whom a complaint has been filed from showing compliance with this act, a rule promulgated under this act, or an order issued under this act, as provided in chapter 4 of Act No. 306 of the Public Acts of 1969.

(5) If an informal conference is not held, or does not result in a settlement of a complaint, a hearing on the complaint shall be held as provided in chapter 4 of Act No. 306 of the Public Acts of 1969.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1668a Fraud; prohibition; notice; hearing; order.

Sec. 18a. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668b Hearing; final decision; judicial review; effect of review on order.

Sec. 18b. (1) A hearing under section 16 or 18a shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 16 or 18a may obtain a judicial review of the order. A consent order may be reviewed as provided

under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668c Enforcement of order; jurisdiction.

Sec. 18c. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 15, 16, or 18a.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668d Violation as misdemeanor; penalty.

Sec. 18d. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 18a is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668e Violation of order; exceptions.

Sec. 18e. A control person who is subject to an order issued under section 18a and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee or registrant after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee or registrant to an unrelated third party.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1669 Continuing to service mortgage loan or making mortgage after suspension or revocation of license or registration; termination of commitment; refund.

Sec. 19. Nothing in this act shall preclude a person whose license or registration has been suspended or revoked, summarily or otherwise, from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension for a period not to exceed 6 months after the date of the entry of the final decision of the presiding officer in the contested case suspending or revoking the license or registration. Nothing in this act shall preclude a person whose license or registration has been suspended or revoked, summarily or otherwise, from making a mortgage loan pursuant to a commitment to make a mortgage loan issued by the person prior to the suspension or revocation. However, a person who received a commitment issued by a person whose license or registration has been suspended or revoked may, prior to closing the loan, terminate the commitment and receive a refund of all money paid to the person.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1670 Powers of commissioner in conducting examination or investigation; conduct of person subpoenaed as misdemeanor; conduct of investigation.

Sec. 20. (1) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Compel the attendance of a person by subpoena.

(b) Administer oaths.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee or registrant, or an affiliate of a licensee or registrant, maintains business related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation shall be confidential and shall not be available for public inspection or copying, or divulged to any person, except as provided in this section. The information may be disclosed as follows:

(i) To the attorney general.

(ii) To any regulatory agency.

- (iii) In connection with an enforcement action brought pursuant to this or another applicable act.
- (iv) To law enforcement officials.
- (v) To persons authorized by the Ingham county circuit court to receive the information.
- (e) Employ independent investigators to conduct a part or all of the investigation, in the case of an investigation other than an examination.

(2) A person subpoenaed under this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

(3) Unless circumstances warrant additional examinations, the commissioner is entitled to conduct 1 examination of each licensee during the calendar year. The commissioner may conduct an investigation of a licensee or registrant against whom a complaint has been filed.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1671 Books, accounts, records, and documents; preservation and examination; reports; false statement as felony; penalty.

Sec. 21. (1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner, conducted under the license or registration to enable the commissioner to determine whether the business of the licensee or registrant is conducted pursuant to this act and the rules promulgated under this act. The preservation of records by reproduction pursuant to the records media act constitutes compliance with this section. If the books, accounts, records, and documents are not made available in this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 8.

(2) A licensee or registrant shall preserve and keep available for examination by the commissioner each mortgage loan document in its possession or control, including, but not limited to, the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the mortgage loan is transferred or assigned, or the expiration of 3 years after the date the mortgage loan is closed, whichever occurs first. If the mortgage loan is transferred or assigned, the licensee or registrant shall preserve and keep available for examination by the commissioner copies of the promissory note, mortgage, land contract, truth-in-lending disclosure statements, and settlement statements in its possession or control for 3 years after the date the mortgage loan is transferred or assigned. Notwithstanding any other provision of this act, each licensee or registrant shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a mortgage loan for the period of time required by state or federal law. A licensee or registrant shall preserve all other books, accounts, records, and documents pertaining to the licensee's or registrant's business and keep them available for examination by the commissioner for not less than 3 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

(3) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required pursuant to this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required pursuant to this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1992, Act 206, Imd. Eff. Oct. 5, 1992.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1672 Violations generally.

Sec. 22. It is a violation of this act for a licensee or registrant to do any of the following:

(a) Fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.

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

(c) Intentionally or due to gross or wanton negligence, repeatedly fail to provide borrowers material disclosures of information as required by law.

(d) Suppress or withhold from the commissioner any information that the licensee or registrant possesses and that, if submitted, would have made the licensee or registrant ineligible for licensing or registration under this act or would have warranted the commissioner's denial of a license application or refusal to accept a registration.

(e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(f) Until proper disbursement is made, fail to place in a trust or escrow account held by a federally insured depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by the licensee that the borrower is obligated to pay to a third party, including amounts paid to the holder of the mortgage loan, amounts for property taxes and insurance premiums, or amounts paid under an agreement that requires if the mortgage loan is not closed the amounts paid shall be refunded to the prospective borrower or if the mortgage loan is closed the amounts paid shall be applied to fees and costs incurred at the time the mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the mortgage loan application, to obtain an appraisal, or to receive a credit report.

(g) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under this act.

(h) To be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(i) Refuse or fail to pay, within a reasonable time, those expenses assessed to the licensee or registrant under this act.

(j) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(k) Fail to make a mortgage loan in accordance with a written commitment to make a mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment before the expiration of the commitment.

(l) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a mortgage loan application.

(m) Take a security interest in real property before closing the mortgage loan to secure payment of fees assessed in connection with a mortgage loan application.

(n) Except as provided under section 18e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2002, Act 391, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1672a Mortgage loans; prohibited advertising.

Sec. 22a. (1) A licensee or registrant shall not, directly or indirectly, make a false, misleading, or deceptive advertisement regarding mortgage loans or the availability of mortgage loans.

(2) A licensee or registrant shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to mortgage loan applicants who meet the standards or qualifications prescribed by the licensee or registrant.

History: Add. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2008, Act 70, Imd. Eff. Apr. 3, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1672b Repealed. 2009, Act 76, Eff. July 31, 2010.

Compiler's note: The repealed section pertained to prohibited conduct of loan officer registrant.

445.1673 Reasonable and necessary charges; terms and conditions of guarantee.

Sec. 23. (1) A licensee or registrant may require a borrower to pay reasonable and necessary charges which are the actual expenses incurred by the licensee or registrant in connection with the making, closing, disbursing, extending, readjusting, or renewing of a mortgage loan and a loan processing fee. The charges shall be in addition to interest authorized by law, and are not a part of the interest collected or agreed to be paid on the mortgage loan within the meaning of the law of this state which limits the rate of interest which may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant. This section is not intended to override the federal preemption of state usury laws contained in the depository institutions deregulation and monetary control act of 1980, Public Law 96-221.

(2) A licensee or registrant which assesses or accepts a fee to guarantee a specified rate of interest on a mortgage loan shall specify the terms and conditions of the guarantee in writing. The terms and conditions of the guarantee shall not extend beyond the expiration of the guarantee unless extended in writing by all the parties.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1674 Annual statement and ledger history of borrower's account; fee prohibited.

Sec. 24. (1) A mortgage servicer shall deliver to the borrower annually a statement of the borrower's account showing the unpaid principal balance of the mortgage loan at the end of the immediately preceding 12-month period, the interest paid during such period, and the amounts deposited into escrow and disbursed from escrow during the period. In addition, within 25 days after receipt of a written request from the borrower, a mortgage servicer shall deliver to the borrower a ledger history of the borrower's account showing the date and amount of all payments made or credited to the account, but in no event for a period in excess of the immediately preceding 12-month period, and the total unpaid balance. In no event shall a mortgage servicer be obligated to furnish to the borrower more than 1 annual statement and 1 ledger history upon written request of the borrower in any 12-month period.

(2) A fee shall not be charged the borrower for the annual statement or for 1 ledger history furnished to a borrower in a 12-month period.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1675 Applicability of act.

Sec. 25. This act does not apply to any of the following:

(a) A depository financial institution whether or not the depository financial institution is acting in a capacity of a trustee or fiduciary.

(b) A salesperson acting as an agent for a residential builder or residential maintenance and alteration contractor, or a residential builder or residential maintenance and alteration contractor licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, if a mortgage is made or negotiated in connection with the sale or financing of a residential structure or improvement constructed or improved by that residential builder or residential maintenance and alteration contractor.

(c) A real estate broker or real estate salesperson who is not a mortgage broker, mortgage lender, or mortgage servicer, or who only acts as a mortgage broker in connection with a real estate sale or lease and acts without additional compensation beyond the customary commission on the sales or leases.

(d) A real estate salesperson who acts for a real estate broker as a mortgage broker, mortgage lender, or mortgage servicer and who receives for the services compensation only from the real estate broker for which the salesperson is an agent or employee.

(e) A person licensed under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, not making, brokering, or servicing mortgage loans as described in this act in a 12-month period from January 1 to December 31.

(f) Agencies or corporate instrumentalities of the United States and of this state and its political subdivisions, including the public employees' retirement system.

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.

(h) A mortgage servicer that in the aggregate with any affiliates services 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.

(i) A mortgage servicer that in the aggregate with any affiliates services only 75 or fewer land contracts, of which 10 or fewer require the collection of money for the payment of taxes or insurance. This subdivision and subdivision (h) do not exempt a mortgage servicer who collects money for the payment of taxes or insurance from the provisions of 1966 PA 125, MCL 565.161 to 565.164. All fees shall be returned to any mortgage servicer described in this subdivision who applied for a license and paid the fees required by this act and who on December 27, 1988 is exempted from licensing.

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

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

(l) A person acting as a fiduciary with respect to any employee pension benefit plan qualified under the internal revenue code who makes mortgage loans solely to plan participants from plan assets.

(m) A mortgage broker, mortgage lender, or a mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution, if the depository financial institution maintains its main office or a branch office in this state.

(n) A nonprofit corporation that makes, brokers, or services mortgage loans in connection with a neighborhood housing program assisted under the neighborhood reinvestment corporation act, 42 USC 8101 to 8107.

(o) A person determined by the commissioner to meet the qualifications established under section 25a.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1994, Act 260, Imd. Eff. July 5, 1994;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 1998, Act 371, Imd. Eff. Oct. 20, 1998;—Am. 2008, Act 72, Eff. Jan. 1, 2009.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1675a Exemptions; filing affidavit; failure to meet qualifications.

Sec. 25a. (1) Except for the requirements of section 23, the commissioner may exempt from the requirements of this act a person the commissioner believes merits the confidence of the community and demonstrates all of the following:

(a) Is exempt from federal income taxes under section 501(c) of the internal revenue code of 1986.

(b) Administers a mortgage loan program funded or sponsored by 1 or more depository financial institutions, state or federal governmental entities, or charitable, religious, or other nonprofit organizations.

(c) Its mortgage loan program is targeted exclusively to persons that would not otherwise have access to affordable mortgage loans from traditional mortgage lending sources.

(d) Its housing development efforts have the support of the agency of its local governmental jurisdiction responsible for community development.

(e) Its mortgage lending activity is limited to a defined geographic area in this state, not larger than a county in the case of a metropolitan statistical area.

(f) Has the capacity to accomplish its business plan.

(g) Does not directly or indirectly share with another person any portion of fees paid to the organization in connection with a mortgage loan.

(h) That it will comply with state and federal law and with the spirit and intent of section 22a.

(i) Does not service mortgage loans.

(2) Notwithstanding subsection (1)(i), the commissioner may issue an exemption to a person that services mortgage loans if the person has complied with subsection (1)(a) through (h) and the commissioner determines the exemption is in the public interest.

(3) Not later than February 1 of every second year following the commissioner's determination that an organization meets the qualifications under subsection (1) or (2), the organization shall file an affidavit that it continues to meet the qualifications.

(4) An organization that has been determined to meet the qualifications of subsection (1) or (2) and

subsequently fails to meet 1 or more of those qualifications shall within 90 days register or file an application for license under section 3(1) or discontinue activities that would require registration or licensure under this act.

History: Add. 1998, Act 371, Imd. Eff. Oct. 20, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1676 Laws to which mortgage loan subject.

Sec. 26. Notwithstanding the place of execution, nominal or real, of a mortgage loan, if the real property is located in this state, the mortgage loan is subject to this act and all other applicable laws of this state.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1677 Period within which to file application for license and proof of financial responsibility, to pay fees, or to register.

Sec. 27. Any mortgage broker, mortgage lender, or mortgage servicer engaged in activities covered by this act on the effective date of this act shall have 90 days after the effective date of this act in which to file an application for a license together with proof of financial responsibility as required by section 4, and to pay any required fees, or to register and pay any required registration fee. During the 90-day period, and until the commissioner acts on the application, the applicant shall be entitled to operate without a license but shall otherwise comply with all other provisions of this act.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1678 Civil or criminal liability.

Sec. 28. This act does not relieve a person from civil or criminal liability under other laws of this state or any federal law.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1679 Prohibited conduct; misdemeanor; penalty; violation of act or rules; civil fine; suspension or revocation of license or registration; refusal to issue or renew license or registration; restitution; proceedings subject to MCL 24.201 to 24.328; bona fide error.

Sec. 29. (1) An owner, partner, member, officer, director, trustee, employee, agent, broker, or other person, or a representative acting on the authority of that person that willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$15,000.00 or imprisonment for not more than 1 year, or both:

(a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act or acts as a loan officer in this state and is not a licensed loan officer if licensure is required under the mortgage loan originator licensing act.

(b) Transfers or assigns a mortgage loan or a security directly representing an interest in 1 or more mortgage loans before the disbursement of 75% or more of the proceeds of the mortgage loan to, or for the benefit of, the borrower. This subdivision does not apply to any of the following:

(i) A land contract not considered to be an equitable mortgage.

(ii) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the loan proceeds for a limited period of time.

(iii) A construction loan.

(iv) A loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the mortgage loan.

(c) Transfers or assigns a mortgage loan or a security representing an interest in 1 or more mortgage loans to an individual investor unless 1 or more of the following apply:

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

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

(A) The broker-dealer is registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(B) The broker-dealer is not an affiliate of the mortgage lender unless the person acquired the broker-dealer registration, directly or indirectly, before September 1, 1987 under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, was affiliated with a mortgage lender before September 1, 1987, and has continuously maintained that registration subsequent to September 1, 1987. For purposes of this subparagraph, if an aggregate of more than 10% of the outstanding voting stock or interest in a corporation, unincorporated organization, partnership, or other legal entity that is a broker-dealer or mortgage lender is sold, transferred, assigned, or otherwise conveyed subsequent to September 1, 1987, the registration is not considered to have been continuously maintained.

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

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

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

(B) An individual who, after the purchase, has an investment of more than \$50,000.00 in mortgage loans or securities representing an interest in 1 or more mortgage loans, including installment payments to be made within 1 year after purchase by the individual, has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00, and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or has obtained the advice of an attorney, certified public accountant, or investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, with respect to the merits and risks of the prospective investment.

(iv) A transferor or assignor does not maintain its principal place of business in this state and the transferee or assignee is not a resident of this state and does not maintain its principal place of business in this state.

(d) Coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a mortgage loan, including, but not limited to, by doing any of the following:

(i) Representing or implying that a real estate appraiser will not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(ii) Representing or implying that a real estate appraiser will not be paid for an appraisal unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(2) Subject to subsections (4) and (5), if the commissioner finds that a licensee or registrant, has violated, or directly or indirectly counseled, aided, or abetted in a violation, of this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee or registrant or a person who controls the licensee or registrant of not more than \$3,000.00 for each violation, except that the licensee or registrant or the person shall not be fined more than \$30,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

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

(c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule is a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection are subject to the procedures of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Subsection (2) does not apply to a violation of this act that results from a bona fide error that occurs notwithstanding the adoption and observance of reasonable procedures intended to prevent the occurrence of

the error.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2008, Act 71, Imd. Eff. Apr. 3, 2008;—Am. 2008, Act 529, Imd. Eff. Jan. 13, 2009;—Am. 2009, Act 76, Eff. July 31, 2010.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1680 Effect of noncompliance on validity or enforceability of mortgage loan.

Sec. 30. Failure to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan, unless the mortgage loan is invalid or unenforceable under the provisions of any other laws of this state or under any federal law.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1681 Action to obtain declaratory judgment, injunction, or actual damages; limitation.

Sec. 31. (1) Whether or not a person seeks damages or has an adequate remedy at law, any person, prosecutor, or the attorney general may bring an action, including a class action, to do any of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Obtain an injunction against a person who is engaging in or is about to engage in a method, act, or practice that violates this act.

(c) Except as limited by subsection (2), recover actual damages resulting from a violation of this act, or \$250.00, whichever is greater, together with reasonable attorney fees and the costs of bringing the action.

(2) If the licensee or registrant establishes by a preponderance of the evidence that the failure to comply with the act was not willful, intentional, or the result of gross or wanton negligence, the amount recovered pursuant to subsection (1)(c) shall not exceed actual damages.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1682 Conservatorship.

Sec. 32. (1) Notwithstanding the provisions of section 19, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing mortgage loans in accordance with the terms of this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require of the conservator a bond and security as the commissioner considers proper. The commissioner may appoint as conservator 1 of the examiners of the bureau or some other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred by it in connection with the conservatorship. Amounts reimbursed shall be paid into the revolving fund provided for in subsection (4). Upon appointment under this subsection, a conservator shall become an employee of the bureau. All expenses of a conservatorship shall be paid out of the assets of the licensee or registrant, upon the approval of the commissioner. The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and possession of the books and records of the licensee or registrant. Notwithstanding the foregoing, the licensee or registrant may cause the rights to service mortgage loans to be transferred or assigned to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the mortgage loans are serviced in accordance with the terms of this act and the servicing contracts.

(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of mortgage loans subject to any terms, conditions, and limitations as the commissioner may prescribe.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in

connection with a conservatorship and all expenses for state supervision of conservatorships under this act shall be deposited in the state treasury and shall be directed to a bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the bureau for expenses incurred by the bureau in connection with conservators of licensees or registrants.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1683 Mortgage industry advisory board; creation; requirements; communication of issues to commissioner; recommendations.

Sec. 33. (1) The mortgage industry advisory board is created.

(2) All of the following apply to the board:

(a) The board shall consist of 7 individuals, appointed by the commissioner as follows:

(i) Four individuals who are employees of, are directors of, or have at least a 25% ownership interest in a licensee or registrant, selected by the commissioner from a list, provided to the commissioner by the Michigan mortgage lenders association, that includes at least 6 nominees, 3 of whom are employees of, directors of, or have at least a 25% ownership interest in a person that holds a license or registration under this act to provide services as a mortgage broker.

(ii) One employee who is an employee of, a director of, or who has at least a 25% ownership interest in a licensee or registrant that is a member of any trade association operating in this state that represents mortgage brokers, mortgage lenders, or mortgage servicers. The trade associations may recommend candidates for this position to the commissioner.

(iii) Two individuals who are employees of, are directors of, or have at least a 25% ownership interest in business entities that provide services to or purchase services from licensees or registrants.

(b) The term of a board member is 4 years, except that for the first board, the commissioner shall appoint 3 individuals for 2-year terms so that the terms of office of board members are staggered.

(c) An individual may not serve more than 2 consecutive 4-year terms, and the commissioner may not reappoint an individual who serves 2 consecutive 4-year terms on the board for at least 12 months after the end of those consecutive terms.

(d) The board shall not include more than 1 member who is employed by, is a director of, or has more than a 1% ownership interest in the same licensee, registrant, affiliate, or other person.

(e) Each member of the board shall serve without compensation. However, the office of financial and insurance regulation shall reimburse a member of the board for his or her travel and other expenses incurred in the performance of an official board function pursuant to the standard travel regulations of the department of management and budget.

(f) The board shall retain minutes of its meetings and any other records of the board for at least 10 years. The board shall make its minutes and any other records prepared, owned, used, in the possession of, or retained by the board in the performance of an official function available to the commissioner immediately on request and make those minutes and records available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The board shall communicate to the commissioner issues of concern to the residential mortgage industry and shall review and make recommendations to the commissioner concerning all of the following:

(a) Rules proposed under this act, the secondary mortgage loan act, or the mortgage loan originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

(b) Procedures for maintaining the confidentiality of personal identifying information and other information concerning all of the following:

(i) Licensees, registrants, and applicants for licensure or registration.

(ii) Licensees, registrants, and applicants for licensure or registration under the secondary mortgage loan act.

(iii) Licensees or applicants for licensure under the mortgage loan originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

(c) Any other issue referred to the board by the commissioner.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 2008, Act 64, Imd. Eff. Apr. 3, 2008;—Am. 2008, Act 324, Imd. Eff. Dec. 18, 2008;—Am. 2009, Act 76, Eff. July 31, 2010;—Am. 2013, Act 14, Imd. Eff. Apr. 16, 2013.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1684 Claims filed against proof of financial responsibility.

Sec. 34. (1) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under section 4 in a manner that, in his or her discretion, best protects the public interest.

(2) Claims may only be filed against a licensee's proof of financial responsibility as provided under this section by the licensee's borrowers, mortgage loan applicants, loan servicing customers, and the commissioner.

(3) Claims filed against a proof of financial responsibility by a borrower or loan applicant shall involve only mortgage loans or mortgage applications secured or to be secured by residential real property located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections charged by the licensee and paid by the claimant to the licensee.

(4) The commissioner may file a claim against a proof of financial responsibility for payment of fines or fees due and payable to the commissioner or the bureau and reimbursement of expenses incurred in investigating the licensee and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

(5) In the event that valid claims exceed the amount of the proof of financial responsibility, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

History: Add. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.