

THE SECONDARY MORTGAGE LOAN ACT (EXCERPT)
Act 125 of 1981

***** 493.56.amended THIS AMENDED SECTION IS EFFECTIVE JULY 31, 2010 *****

493.56.amended License or registration; filing application or renewal; bond or letter of credit; claims filed against proof of financial responsibility; maintenance of net worth; determination; assets excluded from computation.

Sec. 6. (1) Except as otherwise provided in this section, at the time of filing an application for a license or registration or renewal of a license or registration, an applicant shall do all of the following:

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

(i) \$25,000.00 for a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender.

(ii) \$125,000.00 for a license or registration to act as a servicer.

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

(i) A corporate surety bond payable to the commissioner that expires no earlier than the date the license or registration expires, executed by a corporate surety approved by the commissioner.

(ii) An irrevocable letter of credit upon which the applicant for a license or registration is the obligor that expires no earlier than the date the license or registration expires, that is issued by a depository financial institution, and the terms of which are approved by the commissioner.

(2) The bond or letter of credit required under subsection (1) shall be conditioned upon the licensee or registrant conducting its business as required under this act and all the rules promulgated under this act, and the payment of all money that becomes due to borrowers, secondary mortgage loan applicants, and the commissioner.

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

(4) Claims may only be filed against a proof of financial responsibility filed with the commissioner under this section by the commissioner and the licensee's or registrant's borrowers, secondary mortgage loan applicants, and loan servicing customers.

(5) Claims filed against a proof of financial responsibility filed with the commissioner under this section by a borrower or loan applicant shall involve only secondary mortgage loans or secondary mortgage loan applications secured or to be secured by real property used as a dwelling 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 by the licensee or registrant.

(6) The commissioner may file a claim against a proof of financial responsibility filed with the commissioner under this section for payment of fines or fees due and payable to the commissioner and reimbursement of expenses incurred in investigating the licensee or registrant 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.

(7) In the event that valid claims exceed the amount of a proof of financial responsibility filed with the commissioner under this section, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

(8) A licensee that acts as a broker and that receives funds from a prospective borrower before the closing of the secondary mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a lender shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a servicer shall maintain a net worth of not less than \$100,000.00.

(9) Net worth under subsection (8) is 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. An applicant shall disclose its net worth on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and in accordance with generally accepted accounting principles. The following assets are excluded in the computation of net worth:

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

(b) An asset, except a construction loans receivable, secured by 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 that 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: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008;—Am. 2009, Act 77, 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.

Popular name: Secondary Mortgage Loan Act