

HOUSE BILL 758

By Todd

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 13, relative to exceptions to the licensure requirements of the Tennessee Residential Lending, Brokerage and Servicing Act.

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

SECTION 1. Tennessee Code Annotated, Section 45-13-201, shall be deleted in its entirety and replaced with the following:

(a)

(1) No person shall act as a mortgage lender, mortgage loan broker or mortgage loan servicer in this state without first obtaining a license under this chapter.

(b) The requirement of a license under subsection (a) and this chapter do not apply to any of the following:

(1) Any depository institution;

(2) Any subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency;

(3) Any institution regulated by the farm credit administration;

(4) Any individual who makes a residential mortgage loan to, or offers or negotiates terms of a residential mortgage loan with or on behalf of, an immediate family member of the individual;

(5) An individual who makes a residential mortgage loan, or simply offers or negotiates terms of a residential mortgage loan, when the loan is secured by a dwelling that served as the individual's residence;

(6) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage loan broker, a mortgage loan originator or by any agent of the mortgage lender, mortgage loan broker or mortgage loan originator;

(7) Any individual who, as seller of the individual's own real property, receives or makes in any consecutive twelve-month period five (5) or fewer residential mortgage loans and who does not hold out to the public as being in the mortgage lending business. This subdivision (a)(7) shall not exempt any individual from the licensure requirement of subsection (a) if the United States department of housing and urban development determines that the individuals to whom this subdivision (a)(7) would otherwise apply are loan originators for purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq., and requires that such individuals be licensed as a mortgage loan originator;

(8) An individual engaged solely in commercial real estate lending or an individual who provides financing on property that is not intended to be, and is not in fact, owner occupied by the person receiving the financing. This subdivision (a)(8) applies to, but is not limited to, an individual who provides financing for real property that will be subsequently leased or sold to a third party. This subdivision (a)(8) shall not exempt any individual from the licensure requirement of subsection (a) if the United States department of housing and urban development determines that the individuals to whom this subdivision (a)(8) would otherwise apply are loan originators for purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. §

5101, et seq., and requires that such individuals be licensed as a mortgage loan originator;

(9) Any person who makes a mortgage loan to an employee of such person as an employment benefit, employment incentive, or relocation package. This subdivision (a)(9) shall not exempt any person from the licensure requirement of subsection (a) if the United States department of housing and urban development determines that the persons to whom this subdivision (a)(9) would otherwise apply are loan originators for purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq., and requires that such persons be licensed as a mortgage loan originator;

(10) Any individual doing any act related to mortgage loans pursuant to an order of any court of competent jurisdiction. This subdivision (a)(10) shall not exempt any individual from the licensure requirement of subsection (a) if the United States department of housing and urban development determines that the individuals to whom this subdivision (a)(10) would otherwise apply are loan originators for purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq., and requires that such individuals be licensed as a mortgage loan originator; and

(11) An individual who performs only real estate brokerage activities and is licensed pursuant to the Tennessee Real Estate Broker License Act of 1993, compiled in title 62, chapter 13, unless the individual is compensated by a mortgage lender, a mortgage loan broker, a mortgage loan originator or by any agent of the mortgage lender, mortgage loan broker or mortgage loan originator.

(c) The requirement of a license to act as a mortgage lender under subsection (a) and the requirements of this chapter pertaining to mortgage lenders, unless otherwise stated, do not apply to any registrant making residential mortgage loans that is authorized to do so under the Industrial Loan and Thrift Companies Act, compiled in chapter 5 of this title; provided, however, that all mortgage loan originators of the registrant must be licensed under part 3 of this chapter.

(d) The commissioner shall be authorized to exempt in whole or in part from the requirements of this chapter additional entities or classes of entities, not including individuals, that the commissioner finds inappropriate to include to effectuate the purposes of this chapter, so long as the exemption is complaint with and does not impede the purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 2 U.S.C. § 5101, et seq.

(e) Upon approval or consent by the United States department of housing and urban development, the commissioner shall be authorized to exempt in whole or in part from this chapter additional individuals or classes of individuals, such as those working for bona fide nonprofit corporations and government agencies, that the commissioner finds inappropriate to include to effectuate the purposes of this chapter.

SECTION 2. The secretary of state is directed to deliver a copy of this act to the appropriate division of the United States department of housing and urban development having responsibility for administering the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.