

**No. 85. An act relating to regulating licensed lenders and mortgage loan originators.**

(H.565)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 2200 is amended to read:

§ 2200. DEFINITIONS

As used in this chapter:

(1) “Commercial loan” means any loan or extension of credit that is described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or extension of credit secured in whole or in part by an owner occupied one- to four-unit dwelling.

(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(3) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities or other interest of any other person.

(4) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank and any savings association as defined in Section 3 of the Federal Deposit Insurance Act. For purposes of this chapter, “depository institution” also includes any credit union organized and regulated as such under the laws of the United States or any state or territory of the United States.

(5)(A) “Employee” means, subject to subdivision (B) of this subdivision (5), an individual whose manner and means of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person;

(B) For purposes of a registered mortgage loan originator as defined in subdivision (22) of this section, the term employee has such binding definition as may be issued by the federal banking agencies in connection with their responsibilities under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(6) “Engage in the business of a mortgage loan originator” means to act as, or to hold oneself out as acting as, or to represent to the public that one can provide the services of a mortgage loan originator, in a commercial context and with some degree of habitualness or repetition. Habitualness or repetition is met if either the individual who acts as a mortgage loan originator does so with

a degree of habitualness or repetition or the source of the prospective financing provides such financing or performs other phases of origination of residential mortgage loans with a degree of habitualness or repetition. Acting in a commercial context is met if either the individual or an entity for which the individual acts does so for the purpose of obtaining profit rather than exclusively for governmental or family purposes.

~~(5)~~(7) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation or any successor of any of these.

~~(6)~~(8) “Holder” shall have the meaning set forth in 9 9A V.S.A. § 1-201(b)(21).

(9) “Housing finance agency” means any authority:

(A) that is chartered by a state to help meet the affordable housing needs of the residents of the state;

(B) that is supervised directly or indirectly by the state government;

(C) that is subject to audit and review by the state in which it operates; and

(D) whose activities make it eligible to be a member of the National Council of State Housing Agencies.

~~(7)~~(10) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild, aunt, uncle, nephew, niece, including stepparents, stepchildren, stepsiblings, step grandparents, step grandchildren, and adoptive relationships. The term also includes former spouses dividing property in connection with a divorce or separation.

~~(8)~~(11) “Individual” means a natural person.

~~(9)~~(12) “Insurance company” shall mean an institution organized and regulated as such under the laws of the state of Vermont or any state or territory of the United States.

~~(10)~~(13) “Licensee” means any person subject to the provisions of section 2201 of this title.

~~(11)~~(14) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(A) For purposes of this subdivision ~~(11)~~(14), the term “clerical or support duties” may include, subsequent to the receipt of a residential mortgage loan application:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

~~(12)~~(15) “Mortgage broker” means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans, other than commercial loans, on real property for others. The term shall not include real estate brokers or salespersons, as defined in 26 V.S.A. § 2211, who in connection with services performed in a prospective real estate transaction, provide mortgage information or assistance to a buyer, if such real estate broker or real estate salesperson is not compensated for providing such mortgage information or assistance in addition to the compensation received from the seller or buyer for such real estate brokerage activity. The term shall not include attorneys

licensed to practice law in this state acting in their professional capacity. The term shall not include persons engaged in the foregoing activities solely in connection with the sale, assignment, or other transfer of one or more previously originated loans.

~~(13)~~(16) “Mortgage loan” means a loan secured primarily by a lien against real estate.

~~(14)~~(17) “Mortgage loan originator”:

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) Takes a residential mortgage loan application; or

(ii) Offers or negotiates terms of a residential mortgage loan; or

(iii) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the services described in subdivision (A)(i) or (A)(ii) of this subdivision (17).

(B) An individual “takes a residential mortgage loan application” if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation).

whether the application is received directly or indirectly from the borrower or prospective borrower.

(C) An individual “offers or negotiates terms of a residential mortgage loan for compensation or gain” if the individual:

(i)(I) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(II) Communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(III) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in subdivision (C)(i) of this subsection or as a result of any residential mortgage loan terms entered into as a result of such activities.

~~(B)~~(D) Does not include:

(i) an individual engaged solely as a loan processor or underwriter, except as otherwise provided in subsection 2201(f) of this chapter;

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code.

~~(15)~~(18) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, or any successor to the Nationwide Mortgage Licensing System and Registry.

~~(16)~~(19) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

~~(17)~~(20) “Person” shall have the meaning set forth in 1 V.S.A. § 128 and includes a natural person, corporation, company, limited liability company, partnership, or association.



~~(18)~~(21) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity or act in any capacity described in subdivision (A), (B), (C), or (D) of this subdivision ~~(18)~~(21).

~~(19)~~(22) “Registered mortgage loan originator” means any individual who:

(A) meets the definition of mortgage loan originator and is an employee of:

(i) A depository institution;

(ii) A subsidiary that is:

(I) Owned and controlled by a depository institution, as determined by a federal banking agency; and

(II) Regulated by a federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

~~(20)~~(23) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(24) “Residential mortgage loan application” means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

~~(21)~~(25) “Residential real estate” means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

~~(22)~~(26) “Sales finance company” means any person who has purchased one or more retail installment contracts, as defined in 9 V.S.A. § ~~§§~~ 2351(5) and 2401(7), from one or more retail sellers located in this state. Taking one or more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

~~(23)~~(27) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Sec. 2. 8 V.S.A. § 2201 is amended to read:

§ 2201. LICENSES REQUIRED

(a) No person shall without first obtaining a license under this chapter from the commissioner:

(1) engage in the business of making loans of money, credit, goods or things in action and charge, contract for or receive on any such loan interest, a finance charge, discount or consideration therefore;

(2) act as a mortgage broker;

(3) ~~act as~~ engage in the business of a mortgage loan originator; or

(4) act as a sales finance company.

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:

(1) an employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state;

(2) an individual sole proprietor who is also a licensed lender or licensed mortgage broker; or

(3) an employee engaged in loan modifications employed at a licensed location of, and supervised and sponsored by, only one third-party loan servicer licensed to operate in this state pursuant to chapter 85 of this title. For purposes of this subsection, “loan modification” means an adjustment or compromise of an existing residential mortgage loan. The term “loan modification” does not include a refinancing transaction.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.

(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

- (1) a state agency, political subdivision, or other public instrumentality of the state;
- (2) a federal agency or other public instrumentality of the United States;
- (3) a gas or electric utility subject to the jurisdiction of the public service board engaging in energy conservation or safety loans;
- (4) a depository institution;
- (5) a pawnbroker;
- (6) an insurance company;
- (7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;
- (8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context;
- (9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under Section 501(c) of the Internal

Revenue Code, and that register with the commissioner of economic development under 10 V.S.A. § 690a~~;~~<sub>2</sub>;

(10) persons who ~~loan~~ lend, other than residential mortgage loans, an aggregate of less than ~~\$50,000.00~~ \$75,000.00 in any one year at rates of interest of no more than 12 percent per annum;

(11) a seller who, pursuant to 9 V.S.A. § 2355(f)(1)(D), includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a depository institution;

(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;

(B) for purposes of this subdivision (12), “senior indebtedness” means:

(i) all indebtedness of the commercial borrower for money borrowed from depository institutions, trust companies, insurance companies, and licensed lenders, and any guarantee thereof; and

(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness;

(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate division of the superior court pursuant to 14 V.S.A. § 2324;

(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(15) a housing finance agency.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision ~~2200(19)~~ 2200(22) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context.

(4) An individual who is an employee of a federal, state, or local government agency, or an employee of a housing finance agency, who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

~~(4)~~(5) 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 lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator. To the extent an attorney licensed in this state undertakes activities that are covered by the definition of a mortgage loan originator, such activities do not constitute engaging in the business of a mortgage loan originator, provided that:



(A) such activities are considered by the state governing body responsible for regulating the practice of law to be part of the authorized practice of law within this state;

(B) such activities are carried out within an attorney–client relationship; and

(C) the attorney carries them out in compliance with all applicable laws, rules, ethics, and standards.

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Sec. 3. 8 V.S.A. § 2204 is amended to read:

§ 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

(a) Upon the filing of the application, payment of the required fees, approval of the bond, and satisfactory proof of liquid assets, the commissioner shall issue and deliver a license to the applicant upon findings by the commissioner as follows:

\* \* \*

(5) The applicant, and each officer, director, and control person of the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(A) During the seven-year period preceding the date of the application for licensing and registration;

(B) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(C) Provided that any pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

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Sec. 4. 8 V.S.A. § 2204b is amended to read:

§ 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

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(e) An individual may ~~retake~~ take a test three consecutive times, with each consecutive ~~taking~~ test occurring at least 30 days after the preceding test.

After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

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Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Approved: April 20, 2012