

SENATE NO. 597

AN ACT TO LICENSE MORTGAGE LOAN ORIGINATORS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. CHAPTER 255F

2 Section 1. Definitions

3 As used in this chapter the following words shall have the following meanings:

4 “Division”, The Commonwealth of Massachusetts Division of Banks.

5 “Commissioner”, The Commissioner of the Commonwealth of Massachusetts Division of Banks.

6 “Entity”, a person or entity that is a “licensee” as defined under M.G.L. Chapter 255E, Section 1,
7 regulated by the Commonwealth of Massachusetts Division of Banks.

8 “Mortgage loan originator”, a natural person: (a) who is employed by or associated with one (1) and
9 not more than one (1) entity as defined above; and (b) who negotiates, solicits, arranges, provides or
10 accepts residential mortgage loan applications, or assists consumers in completing such applications;
11 and (c) whose compensation for such activity is in any way based on a number or dollar volume of
12 mortgage loan applications, mortgage loan closings or other residential mortgage loan activity.

13 Employees whose responsibilities are limited to clerical and administrative tasks and who does not
14 solicit borrowers, accept applications, or negotiate the terms of residential mortgage loans on behalf of
15 the employer are not considered loan originators and do not require licenses.

16 “Mortgage loan”, a loan or an extension of credit, including, but not limited to, an extension of credit
17 pursuant to a contract or an assigned contract for the sale of goods or services, made to a natural
18 person, the proceeds of which are to be used primarily for personal, family or household purposes, and
19 which is secured wholly or partially by a mortgage on residential property.

20 “Residential property”, real property located in the Commonwealth of Massachusetts having thereon a
21 dwelling house with accommodations for four or less separate households intended to be used or
22 occupied for residential purposes.

23 Section 2. Mortgage loan originator license requirement

24 No natural person shall act as a mortgage loan originator unless such person has first obtained a
25 mortgage loan originator license from the Commissioner. A natural person who meets the definition
26 of a mortgage loan originator, prior to enactment of this Chapter 255F, shall file an application and
27 obtain a license from the Commissioner within one hundred eighty (180) days of the enactment of
28 Chapter 255F without being required to comply with Section 4(b) hereof. An entity shall not
29 knowingly employ or retain a mortgage loan originator unless the mortgage loan originator is licensed
30 hereunder.

31 Section 3. Rules and regulations

32 The Commissioner may adopt, amend or repeal rules and regulations to aid in the administration and
33 enforcement of this chapter.

34 Section 4. License application; residential mortgage lending course requirements

35 (a) The application for a license shall be in writing and in the form prescribed by the Commissioner,
36 signed under the pains and penalties of perjury, and shall contain the name, address and license
37 number of the entity with whom a mortgage loan originator is employed or associated and other
38 information as the Commissioner may require, including evidence of compliance of subsection (b).

39 Such application shall also include a description of the activities of the application, in such detail and
40 for such periods as the Commissioner may require, as well as such further information as the
41 Commissioner may require. The Division shall investigate each applicant and such investigation shall
42 include a criminal records check based on the fingerprints of the applicant and a civil records check.
43 The Division shall require each applicant to file a set of the applicant's fingerprints, taken by a law
44 enforcement agency, and any other information necessary to complete a statewide and nationwide
45 criminal check with the Criminal Investigation Bureau of the Department of Justice for state
46 processing and the Federal Bureau of Investigation for federal processing. All costs associated with
47 the criminal history check shall be determined annually by the Commissioner of administration under
48 the provisions of Section three B (3B) of Chapter Seven (7). All costs associated with the criminal
49 history check are the responsibility of the applicant. Criminal history records provided to the Division
50 under this section are confidential and the Division may use the records only to determine if the
51 applicant is eligible for licensure.

52 (b) An applicant shall (i) have completed a residential mortgage lending course, accredited by the
53 Commonwealth of Massachusetts' Division of Professional Licensure, and managed by the
54 Independent Board of Mortgage Lending, not later than the two-year period immediately preceding the
55 date of the application and (ii) provide evidence that the applicant has received a passing grade on the
56 residential mortgage lending course examination administered by the Board of Residential Mortgage
57 Lending within such two-year period.

58 Section 5. Issuance of license by Commissioner; notice of license denial; appeal

59 If the Commissioner finds that the financial responsibility, character, reputation, integrity and general
60 fitness of the applicant is such as to warrant belief that the applicant will act honestly, fairly, soundly
61 and efficiently in the public interest, consistent with the purposes of this chapter, the Commissioner

62 shall thereupon issue the applicant a license to engage in the business of a mortgage loan originator
63 upon payment of the required fees. If the Commissioner shall not so find, or if the applicant's criminal
64 history demonstrates any felony criminal convictions or other convictions involving fraud or if the
65 applicant has had any adverse civil judgments involving fraudulent dealings, the Commissioner shall
66 not issue a license and he or she shall notify the applicant of the denial. Within twenty (20) days
67 thereafter, the Commissioner shall enter upon the Division's records a written decision and findings
68 containing the reasons supporting the denial and shall forthwith give written notice thereof by
69 registered mail to the applicant. Within thirty (30) days after the date of such notice, such appeal
70 should be processed as a de novo appeal pursuant to MGL c. 30(a). The Commissioner shall approve
71 or deny every application for a license within sixty (60) days after the filing thereof, but any failure of
72 the Commissioner to act within such period shall not be deemed to be an approval of any such
73 application.

74 Section 6. Employment of loan originator; information on license; notice requirements

75 A loan originator may transact business only for an employing entity. Each original license issued to a
76 loan originator must be provided to and maintained by the employing entity at the entity's main office.
77 If the employment of a loan originator is terminated, the entity shall return the loan originator's license
78 to the Division within five (5) business days after termination. For a period of one (1) year after the
79 termination of employment, the loan originator may request the transfer of the license to another entity
80 by submitting a relocation application to the Division, along with a fee established by the Division by
81 rule. The return of the license of any loan originator to the Division that is not transferred to another
82 entity terminates the right of the loan originator to engage in any residential mortgage loan origination
83 activity until Division procedures have been followed to reinstate the license. The license of any loan

84 originator that has been returned to the Division and not transferred to another entity within one (1)
85 year of termination of employment must be cancelled.

86 Each license shall state the name and address of the mortgage loan originator licensee. A copy of the
87 license must be prominently posted at the place of business of the entity with whom the mortgage loan
88 originator is employed or associated.

89 Section 7. Fees; license renewal; disposition of fees

90 A loan originator seeking licensure shall pay an initial non-refundable license application fee of \$500.

91 The license of a mortgage loan originator shall expire bi-annually. Each licensee, shall bi-annually, on
92 or before a date to be determined by the Commissioner, submit a license renewal application with the
93 Commissioner. Said license renewal application shall be on a form prescribed by the Commissioner,
94 signed under the pains and penalties of perjury, containing such information as the Commissioner may
95 require, including evidence satisfactory to the Commissioner that the licensee has completed at least
96 sixteen (16) hours of residential mortgage lending continuing education courses accredited by the
97 Division of Professional Licensure and the Independent Board of Mortgage Lending during the two-
98 year period immediately preceding license renewal. Failure of the licensee to satisfy the continuing
99 education requirement will render the mortgage loan originator ineligible for renewal and deemed to
100 be inactive. A mortgage loan originator neglecting to file such application or failing to amend the
101 same within fifteen (15) days of notice from the Commissioner directing the same shall be deemed
102 inactive. Inactive mortgage loan originators are prohibited from engaging in business as a mortgage
103 loan originator.

104 All fees collected under this section must be deposited in the Division's state special revenue fund to
105 be used by the Division in administering the provisions of this Chapter.

106 Section 8. License suspension or revocation; notice and hearing

107 The Commissioner may suspend, revoke or refuse to renew any license issued pursuant to this chapter
108 if the Commissioner finds that: (a) the licensee has violated any provision of this chapter or any rule
109 or regulation adopted hereunder, or any other law applicable to the conduct of its business; (b) any fact
110 or condition exists which, if it had existed at the time of the original application for such license,
111 would have warranted the Commissioner in refusing to issue such license; or (c) the licensee has
112 committed any fraud, misappropriated funds or misrepresented any of the material particulars of a
113 mortgage loan transaction.

114 Except as provided in section seven (7), no license shall be revoked or suspended except after notice
115 and a hearing thereon pursuant to MGL Chapter 30(a). Any order issued pursuant to this section shall
116 be subject to de novo review as provided in MGL Chapter 30(a).

117 A licensee may surrender a license by delivering to the Commissioner written notice that it hereby
118 surrenders such license, but such surrender shall not affect the civil or criminal liability of the licensee
119 for acts committed before such surrender.

120 Section 9. Commissioner's order to cease and desist from unlawful act or practice; prior notice and
121 opportunity for hearing; temporary order

122 (a) If the Commissioner determines, after giving notice of and opportunity for a hearing, that a
123 licensee has engaged in or is about to engage in an act or practice constituting a violation of a
124 provision of this chapter or a rule, regulation or order hereunder, he or she may order such licensee to
125 cease and desist from such unlawful act or practice and take such affirmative action as in his judgment
126 will effect the purposes of this chapter.

127 (b) If the Commissioner makes written findings of fact that the public interest will be irreparably
128 harmed by delay in issuing an order under subsection (a) her or she may issue a temporary cease and
129 desist order. Upon the entry of a temporary cease and desist order, the Commissioner shall promptly

130 notify, in writing, the licensee and the employing entity affected thereby that such order has been so
131 entered, the reasons therefore, and that within twenty (20) days after the receipt of a written request
132 from such licensee, the matter will be scheduled for hearing to determine whether or not such
133 temporary order shall become permanent and final. If no such hearing is requested and none is
134 ordered by the Commissioner, the order shall remain in effect until it is modified or vacated by the
135 Commissioner. If a hearing is requested or ordered, the Commissioner, after giving notice of and
136 opportunity for a hearing to the licensee subject to said order and the employing entity, shall, by
137 written findings of facts and conclusions of law, vacate, modify or make permanent the order.

138 (c) No order under this section, except an order issued pursuant to subsection (b), may be entered
139 without prior notice of and opportunity for a hearing. The Commissioner may vacate or modify an
140 order under this section upon finding that the conditions which required such an order have changed
141 and that it is in the public interest to so vacate or modify.

142 Any order issued pursuant to this section shall be subject to de novo review as provided in MGL
143 Chapter 30(a).

144 Section 10. Civil actions filed by Commissioner

145 The Commissioner may enforce the provisions of this chapter, or restrain any violations thereof, by
146 filing a civil action in any court of competent jurisdiction. Nothing herein shall be construed so as to
147 create a private cause of action.

148 Section 11. Penalties

149 Whoever violates any provision of section two or any rule or regulation made thereunder by the
150 Commissioner shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars. Each day
151 such violation occurs or continues shall be deemed a separate offense.

152 Amendment to CHAPTER 13 – New Sections 98, 99, 100

153 Section 98. Independent Board of Mortgage Lending

154 There is hereby created an Independent Board of Mortgage Lending whose exclusive purpose shall be
155 to (i) review residential mortgage lending course curricula for mortgage loan originators as defined in
156 Section 1 of Chapter 255F to be offered or sponsored by any enterprise (including for profit or not for
157 profit entities), recommend accreditation thereof by the Division of Professional Licensure, and issue
158 certificates of completion thereof, and (ii) develop and administer a residential mortgage lending
159 course examination. The Independent Board of Mortgage Lending shall consist of five (5) persons
160 who are residents of the Commonwealth of Massachusetts, of who four (4) shall be employed by an
161 entity as defined in Section 1 of Chapter 255F and have at least five (5) years' experience in the
162 residential mortgage loan industry, and one (1) of whom shall be a representative of the public, subject
163 to the provision of Section nine B (9B). The members of said board shall be appointed in January of
164 each year by the Governor, for a term of three (3) years from the first day of the following February.
165 Any member of the board may be reappointed by the Governor to serve successive terms.

166 Section 99. Independent Board of Mortgage Lending; Organization; Meetings

167 The members of the board shall meet in February of each year at such time or place as they shall
168 determine, and shall organize by electing from its own members a Chairman and a Secretary, who
169 shall hold their respective office for one year. The board shall hold regular meetings in February,
170 May, August and November, and such additional meetings as it may determine, at such times and
171 places as may be agreed upon by the members.

172 Section 100. Independent Board of Mortgage Lending; Compensation and Expenses

173 Each member of the board shall serve without compensation, but shall be paid by the Commonwealth
174 the expenses necessarily incurred by him or her in the discharge of his or her official duties. The

175 Commonwealth shall provide the board with adequate office space and shall pay the expenses of the
176 board incurred in the performance of its duties.