

**CS FOR HOUSE BILL NO. 104(L&C) am**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Amended: 5/9/19

Offered: 5/1/19

Sponsor(s): REPRESENTATIVES WILSON, Thompson

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to exemptions from mortgage lender, mortgage broker, and mortgage**  
2 **loan originator licensing requirements; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 06.60.015(a) is amended to read:

5 (a) The following persons are exempt from the mortgage lender or mortgage  
6 broker licensing requirements of this chapter:

7 (1) a depository institution;

8 (2) a subsidiary that is

9 (A) owned and controlled by a depository institution; and

10 (B) regulated by a federal banking agency;

11 (3) an institution regulated by the Farm Credit Administration; [OR]

12 (4) a federal, state, or local government agency, including an agency

13 that arranges or provides financing for mortgage loans; or

14 (5) a bona fide nonprofit organization.

1 \* **Sec. 2.** AS 06.60.015(b) is amended to read:

2 (b) The following [INDIVIDUALS] are exempt from the mortgage loan  
3 originator licensing requirements of this chapter:

4 (1) **an individual who is** a registered mortgage loan originator, when  
5 acting for an entity described in (a)(1), (2), or (3) of this section;

6 (2) an individual who offers or negotiates terms of a residential  
7 mortgage loan with or on behalf of an immediate family member of the individual; in  
8 this paragraph, "immediate family member" means a spouse, child, stepchild, sibling,  
9 stepsibling, parent, stepparent, grandparent, or grandchild;

10 (3) an individual seller who offers or negotiates terms of a residential  
11 mortgage loan secured by a dwelling that serves as the individual's residence;

12 (4) **a seller, including a natural person, estate, trust, corporation,**  
13 **or another entity, that offers or negotiates the terms of a residential mortgage**  
14 **loan for the sale of residential property owned by the seller, if**

15 **(A) the loan is secured by a dwelling on the property;**

16 **(B) the seller self-finances the loan;**

17 **(C) during any 12-month period, the seller finances five or**  
18 **fewer sales under this paragraph;**

19 **(D) in the ordinary course of a business of the seller, the**  
20 **seller has not**

21 **(i) constructed the dwelling that secures the loan on**  
22 **the property; or**

23 **(ii) acted as a contractor for the construction of the**  
24 **dwelling that secures the loan on the property;**

25 **(E) the loan has an interest rate that is fixed for the full**  
26 **term of the loan;**

27 **(F) the loan does not**

28 **(i) have a payment schedule that results in negative**  
29 **amortization; or**

30 **(ii) allow or impose a prepayment penalty; and**

31 **(G) the seller determines that the purchaser has a**

1                   **reasonable ability to repay the loan;**

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

7                   **(6) an employee of a federal, state, or local government agency that**  
8 **is exempt under (a)(4) of this section from the mortgage lender or mortgage**  
9 **broker licensing requirements of this chapter.**

10 \* **Sec. 3.** AS 06.60.015(b), as amended by sec. 2 of this Act, is amended to read:

11                   (b) The following are exempt from the mortgage loan originator licensing  
12 requirements of this chapter:

13                   (1) an individual who is a registered mortgage loan originator, when  
14 acting for an entity described in (a)(1), (2), or (3) of this section;

15                   (2) an individual who offers or negotiates terms of a residential  
16 mortgage loan with or on behalf of an immediate family member of the individual; in  
17 this paragraph, "immediate family member" means a spouse, child, stepchild, sibling,  
18 stepsibling, parent, stepparent, grandparent, or grandchild;

19                   (3) an individual seller who offers or negotiates terms of a residential  
20 mortgage loan secured by a dwelling that serves as the individual's residence;

21                   (4) a seller, including a natural person, estate, trust, corporation, or  
22 another entity, that offers or negotiates the terms of a residential mortgage loan for the  
23 sale of residential property owned by the seller, if

24                                   (A) the loan is secured by a dwelling on the property;

25                                   (B) the seller self-finances the loan;

26                                   (C) during any 12-month period, the seller finances five or  
27 fewer sales under this paragraph;

28                                   (D) in the ordinary course of a business of the seller, the seller  
29 has not

30   (i) constructed the dwelling that secures the loan on the  
31 property; or

1 (ii) acted as a contractor for the construction of the  
2 dwelling that secures the loan on the property;

3 (E) the loan has an interest rate that is fixed for the full term of  
4 the loan;

5 (F) the loan does not

6 (i) have a payment schedule that results in negative  
7 amortization; or

8 (ii) allow or impose a prepayment penalty; and

9 (G) the seller determines that the purchaser has a reasonable  
10 ability to repay the loan;

11 (5) an individual who is a licensed attorney who negotiates the terms  
12 of a residential mortgage loan on behalf of a client as an ancillary matter to the  
13 attorney's representation of the client, unless the attorney is compensated by a lender,  
14 a mortgage broker, or another mortgage loan originator or by an agent of a lender, a  
15 mortgage broker, or another mortgage loan originator;

16 (6) an employee of a federal, state, or local government agency that is  
17 exempt under (a)(4) of this section from the mortgage lender or mortgage broker  
18 licensing requirements of this chapter;

19 **(7) an employee of a bona fide nonprofit organization if the**  
20 **employee acts as a mortgage loan originator only with respect to**

21 **(A) the employee's duties to the bona fide nonprofit**  
22 **organization; and**

23 **(B) residential mortgage loans that have terms that are**  
24 **favorable to the borrower by being consistent with mortgage loan**  
25 **origination for a public or charitable purpose rather than in a commercial**  
26 **context.**

27 \* **Sec. 4.** AS 06.60.015 is amended by adding new subsections to read:

28 (c) For a nonprofit organization to qualify as a bona fide nonprofit  
29 organization under (a)(5) of this section, the department shall determine that the  
30 nonprofit organization

31 (1) has and maintains the status of a tax-exempt organization under 26

1 U.S.C. 501(c)(3) (Internal Revenue Code);

2 (2) promotes affordable housing or provides home ownership  
3 education or similar services;

4 (3) conducts its activities in a manner that serves a public or charitable  
5 purpose, rather than a commercial purpose, by offering mortgages that are not readily  
6 available from other lenders;

7 (4) receives funding, receives revenue, and charges fees in a manner  
8 that does not provide an incentive for the organization or its employees to act other  
9 than in the best interests of its clients;

10 (5) compensates its employees in a manner that does not provide an  
11 incentive to its employees to act other than in the best interests of its clients;

12 (6) provides or identifies for a borrower residential mortgage loans  
13 with terms favorable to the borrower and comparable to mortgage loans and housing  
14 assistance provided under government housing assistance programs; for residential  
15 mortgage loans to have terms that are favorable to the borrower, the terms must be  
16 consistent with mortgage loan origination for a public or charitable purpose, rather  
17 than in a commercial context, and provide for interest rates that are less than the  
18 current market rate; and

19 (7) meets other standards that the department determines are  
20 appropriate.

21 (d) The department may establish by regulation the information that an  
22 organization must provide to qualify as a bona fide nonprofit organization under (c) of  
23 this section.

24 (e) The department shall establish by regulation

25 (1) the procedure for determining that an organization meets the  
26 criteria identified under (c) of this section;

27 (2) the period for which the determination made under (c) of this  
28 section remains in effect and the fee to be paid by the organization;

29 (3) how often and under what circumstances the department will  
30 examine the books and activities of the organization to determine that the organization  
31 continues to meet the criteria identified under (c) of this section; and

1 (4) the procedure for denying an organization the status of a bona fide  
 2 nonprofit organization, for suspending or revoking an organization's status as a bona  
 3 fide nonprofit organization if the organization does not continue to meet the criteria  
 4 identified under (c) of this section, and for taking disciplinary action against an  
 5 organization arising out of a violation of (c) - (e) of this section; the provisions of  
 6 AS 44.62 (Administrative Procedure Act) apply to an action of the department under  
 7 this paragraph.

8 \* **Sec. 5.** AS 06.60.990 is amended by adding a new paragraph to read:

9 (36) "bona fide nonprofit organization" means an organization that the  
 10 department has determined qualifies as a bona fide nonprofit organization under  
 11 AS 06.60.015(c).

12 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
 13 read:

14 TRANSITION: REGULATIONS. The Department of Commerce, Community, and  
 15 Economic Development may adopt regulations necessary to implement the changes made by  
 16 AS 06.60.015(a)(5), added by sec. 1 of this Act, AS 06.60.015(b)(7), added by sec. 3 of this  
 17 Act, AS 06.60.015(c) - (e), added by sec. 4 of this Act, and AS 06.60.990(36), added by sec. 5  
 18 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but  
 19 not before the effective date of the section being implemented.

20 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
 21 read:

22 RETROACTIVITY. AS 06.60.015(b)(4), added by sec. 2 of this Act, is retroactive to  
 23 July 1, 2008.

24 \* **Sec. 8.** Sections 2, 6, and 7 of this Act take effect immediately under AS 01.10.070(c).

25 \* **Sec. 9.** Except as provided by sec. 8 of this Act, this Act takes effect January 1, 2020.