

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 5/1/19

Referred: Rules

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 is amended to read:

5 **Sec. 06.60.015. Exemptions.** (a) The following persons are exempt from the
6 mortgage lender or mortgage 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 (b) The following [INDIVIDUALS] are exempt from the mortgage loan
2 originator licensing requirements of this chapter:

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

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

9 (3) **a [AN INDIVIDUAL] seller, including a natural person, estate,**
10 **trust, corporation, or another entity, that [WHO] offers or negotiates the terms of a**
11 **residential mortgage loan for the sale of residential property owned by the seller, if**

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

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

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

16 **(D) in the ordinary course of a business of the seller, the**
17 **seller has not**

18 **(i) constructed the dwelling that secures the loan on**
19 **the property; or**

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

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

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

25 **(i) have a payment schedule that results in negative**
26 **amortization; or**

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

28 **(G) the seller determines that the purchaser has a**
29 **reasonable ability to repay the loan** [THAT SERVES AS THE
30 INDIVIDUAL'S RESIDENCE];

31 (4) **an individual who is** a licensed attorney who negotiates the terms

1 of a residential mortgage loan on behalf of a client as an ancillary matter to the
 2 attorney's representation of the client, unless the attorney is compensated by a lender,
 3 a mortgage broker, or another mortgage loan originator or by an agent of a lender, a
 4 mortgage broker, or another mortgage loan originator;

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

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

9 **(B) residential mortgage loans that have terms that are**
 10 **favorable to the borrower by being consistent with mortgage loan**
 11 **origination for a public or charitable purpose rather than in a commercial**
 12 **context;**

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

16 * **Sec. 2.** AS 06.60.015 is amended by adding new subsections to read:

17 (c) For a nonprofit organization to qualify as a bona fide nonprofit
 18 organization under (a)(5) of this section, the department shall determine that the
 19 nonprofit organization

20 (1) has and maintains the status of a tax-exempt organization under 26
 21 U.S.C. 501(c)(3) (Internal Revenue Code);

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

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

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

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

1 (6) provides or identifies for a borrower residential mortgage loans
 2 with terms favorable to the borrower and comparable to mortgage loans and housing
 3 assistance provided under government housing assistance programs; for residential
 4 mortgage loans to have terms that are favorable to the borrower, the terms must be
 5 consistent with mortgage loan origination for a public or charitable purpose, rather
 6 than in a commercial context, and provide for interest rates that are less than the
 7 current market rate; and

8 (7) meets other standards that the department determines are
 9 appropriate.

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

13 (e) The department shall establish by regulation

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

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

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

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

28 * **Sec. 3.** AS 06.60.990 is amended by adding a new paragraph to read:

29 (36) "bona fide nonprofit organization" means an organization that the
 30 department has determined qualifies as a bona fide nonprofit organization under
 31 AS 06.60.015(c).

1 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **RETROACTIVITY.** AS 06.60.015(b)(3), as amended by sec. 1 of this Act, is
4 retroactive to July 1, 2008.

5 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).