

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Amended: 5/15/19

Offered: 5/1/19

Sponsor(s): REPRESENTATIVES WILSON, Thompson

SENATORS von Imhof, Birch

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 or potential**

1 **purchaser has a reasonable ability to repay the loan; the seller shall keep**
 2 **confidential and may not disclose to another person at any time credit**
 3 **scores, salary information, tax records, and other financial information of**
 4 **the purchaser or potential purchaser obtained by the seller under this**
 5 **subparagraph for the purpose of determining whether the purchaser or**
 6 **potential purchaser has a reasonable ability to repay the loan; however,**
 7 **the seller may disclose the financial information when, and only to the**
 8 **extent that,**

9 **(i) the purchaser or potential purchaser authorizes**
 10 **the disclosure in writing;**

11 **(ii) the seller makes the disclosure to obtain**
 12 **professional advice relating to a dispute with the purchaser or**
 13 **potential purchaser;**

14 **(iii) federal or state law requires the disclosure; or**

15 **(iv) a court orders the disclosure;**

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

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

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

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

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

29 (2) an individual who offers or negotiates terms of a residential
 30 mortgage loan with or on behalf of an immediate family member of the individual; in
 31 this paragraph, "immediate family member" means a spouse, child, stepchild, sibling,

1 stepsibling, parent, stepparent, grandparent, or grandchild;

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

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

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

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

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

11 (D) in the ordinary course of a business of the seller, the seller
12 has not

13 (i) constructed the dwelling that secures the loan on the
14 property; or

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

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

19 (F) the loan does not

20 (i) have a payment schedule that results in negative
21 amortization; or

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

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

25 (5) an individual who is a licensed attorney who negotiates the terms
26 of a residential mortgage loan on behalf of a client as an ancillary matter to the
27 attorney's representation of the client, unless the attorney is compensated by a lender,
28 a mortgage broker, or another mortgage loan originator or by an agent of a lender, a
29 mortgage broker, or another mortgage loan originator;

30 (6) an employee of a federal, state, or local government agency that is
31 exempt under (a)(4) of this section from the mortgage lender or mortgage broker

1 licensing requirements of this chapter;

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

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

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

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

11 (c) For a nonprofit organization to qualify as a bona fide nonprofit
 12 organization under (a)(5) of this section, the department shall determine that the
 13 nonprofit organization

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

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

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

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

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

26 (6) provides or identifies for a borrower residential mortgage loans
 27 with terms favorable to the borrower and comparable to mortgage loans and housing
 28 assistance provided under government housing assistance programs; for residential
 29 mortgage loans to have terms that are favorable to the borrower, the terms must be
 30 consistent with mortgage loan origination for a public or charitable purpose, rather
 31 than in a commercial context, and provide for interest rates that are less than the

1 current market rate; and

2 (7) meets other standards that the department determines are
3 appropriate.

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

7 (e) The department shall establish by regulation

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

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

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

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

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

23 (36) "bona fide nonprofit organization" means an organization that the
24 department has determined qualifies as a bona fide nonprofit organization under
25 AS 06.60.015(c).

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

28 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
29 Economic Development may adopt regulations necessary to implement the changes made by
30 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
31 Act, AS 06.60.015(c) - (e), added by sec. 4 of this Act, and AS 06.60.990(36), added by sec. 5

1 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but
2 not before the effective date of the section being implemented.

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

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

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

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