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BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

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SENATE BILL NO. 371

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the regulation and licensing of
7 residential mortgage lenders and servicers; and
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. ALASKA RESIDENTIAL MORTGAGE ACT.

12 Sec. 06.50.005. LICENSE REQUIRED. Unless exempt under AS 06.-
13 50.010, a person may not act as a residential mortgage lender or a
14 residential mortgage servicer without a license.

15 Sec. 06.50.010. EXEMPTIONS. (a) A government agency acting
16 under state or federal authority is exempt from the requirements of
17 this chapter.

18 (b) The following are exempt from the provisions of AS 06.50.-
19 015, 06.50.025(b), 06.50.035, and 06.50.075, but are subject to all
20 other provisions of this chapter:

21 (1) a person who makes not more than five mortgage loans
22 during any 12 consecutive months;

23 (2) a depository institution;

24 (3) a nonprofit corporation that makes residential mortgage
25 loans to borrowers who do not otherwise qualify for conventional
26 financing;

27 (4) a qualified employee pension benefit plan that makes
28 mortgage loans solely to plan participants from plan assets.

29 Sec. 06.50.015. LICENSE APPLICATION, FEES, RENEWAL, LAPSE, AND

1 REINSTATEMENT. (a) The department shall adopt regulations that
2 establish the application form and application procedure for licenses.

3 (b) The department shall adopt regulations that govern the
4 payment of application fees, license and renewal fees, investigation
5 fees, and document filing fees. A fee shall be based on the actual
6 cost to the department of conducting the activity for which it is
7 charged, and it may not exceed that amount.

8 (c) A license must be renewed biennially, according to dates set
9 by the department. If a license is not renewed by the renewal date,
10 the license lapses. In addition to renewal fees required for rein-
11 statement of the lapsed license, the department may impose a delayed
12 renewal penalty, established by regulation, that shall be paid before
13 a license that has been lapsed for more than 60 days may be renewed.

14 (d) A license may not be renewed if it has been lapsed for five
15 years or more.

16 Sec. 06.50.020. ADMINISTRATIVE POWERS OF THE DEPARTMENT. (a)
17 In addition to other powers and duties provided by this chapter, the
18 department may

19 (1) develop, issue, and receive license application forms
20 and license renewal forms;

21 (2) collect and record fees;

22 (3) maintain records and files;

23 (4) receive and investigate any complaint about the making
24 or servicing of a residential mortgage loan;

25 (5) require reports; and

26 (6) publish information concerning a violation of this
27 chapter, a regulation adopted under this chapter, or an order of the
28 commissioner issued under this chapter or AS 06.01.

29 (b) The department may adopt regulations to implement this

1 chapter.

2 Sec. 06.50.025. INVESTIGATIONS AND EXAMINATIONS. (a) The
3 department may conduct investigations to determine whether a provision
4 of this chapter, of a regulation adopted under it, or of an order
5 issued by the commissioner under this chapter or AS 06.01 has been
6 violated.

7 (b) The department shall, at least once every 18 months, conduct
8 an examination of each licensee. The department may examine an affil-
9 iate of a licensee if the commissioner determines from the examination
10 of the licensee that the affiliate might have violated this chapter or
11 a regulation adopted under it.

12 (c) The department may conduct an investigation or an examin-
13 ation without prior notice. The investigation or examination may
14 include an audit. Within 60 days after completion of an examination,
15 the department shall furnish a copy of the examination report to the
16 licensee.

17 (d) In connection with an investigation or an examination, the
18 commissioner may

19 (1) order a person to submit a written statement or respond
20 to oral questions concerning the matter being investigated or ex-
21 amined;

22 (2) take evidence and administer oaths and affirmations;

23 (3) subpoena witnesses; and

24 (4) subpoena the production of documents.

25 (e) If a person fails to comply with a subpoena issued by the
26 commissioner, the superior court, may order the person to comply with
27 the subpoena.

28 (f) A person may not refuse to attend, testify, or produce
29 documents as ordered by the commissioner. If a person claims the

1 privilege against self-incrimination, the commissioner may request the
2 attorney general to apply to the superior court under the procedures
3 set out in AS 12.50.101 for an order compelling testimony.

4 (g) Except when authorized by law or a court order, a public
5 official or employee may not disclose to a person, other than the
6 examinee, the person being investigated, or a person authorized to
7 investigate or enforce provisions of this chapter, information
8 acquired in the course of an investigation or examination.

9 Sec. 06.50.030. INVESTIGATION AND EXAMINATION FEES AND PEN-
10 ALTIES. (a) A person shall pay the expenses of the department rea-
11 sonably incurred in the investigation or examination of that person.
12 The department shall assess a fee as provided in AS 06.01.010.

13 (b) An examination or investigation fee shall be paid within 30
14 days after receipt of the notice of assessment. A person who fails to
15 make the payment shall pay a penalty, in an amount specified by regu-
16 lation adopted by the department, for each day that the payment is
17 late. The fee and penalty may be recovered in a civil action brought
18 by the department.

19 Sec. 06.50.035. REQUIRED BUSINESS PLACE AND FINANCIAL WORTH. A
20 person may not be issued and may not hold a license unless that person
21 has a permanent place of business in this state and maintains a net
22 worth, as defined by regulations adopted by the department, of at
23 least \$100,000.

24 Sec. 06.50.040. LOAN APPLICATION PROCEDURES. (a) Before ac-
25 cepting a loan application, a residential mortgage lender shall fur-
26 nish the applicant with written information concerning how loan pay-
27 ments will be applied, the applicant's rights if the loan is sold to
28 or serviced by another person, and other information required by
29 regulation adopted by the department.

1 (b) Not later than three days after receiving a written request,
2 a residential mortgage lender shall provide written confirmation of
3 any oral representations concerning rights and duties of borrowers.

4 (c) If it will materially affect a loan in process, then not
5 later than three business days after receiving notice of a present or
6 future change in the rules that govern a secondary market underwriter,
7 investor, guarantor, or participant, or the requirements of those
8 persons, a residential mortgage lender shall inform the loan applicant
9 in writing of the change.

10 (d) Before loan obligation documents are signed by a person, a
11 residential mortgage lender may not require the person to pay a fee
12 unless the fee is authorized by a regulation adopted under this chap-
13 ter.

14 Sec. 06.50.045. TOLL FREE TELEPHONE ACCESS. A residential
15 mortgage lender or servicer shall provide a borrower with toll free
16 telephone access during normal working hours at the business location
17 where that borrower's loan is being processed or serviced.

18 Sec. 06.50.050. SERVICING OF LOANS. (a) Within 24 hours after
19 a residential loan payment is delivered to the payment address, the
20 residential mortgage lender or servicer receiving the payment shall
21 credit the payment to the account of the borrower.

22 (b) Within 24 hours after receiving an inquiry from a borrower
23 about that person's residential loan account, the lender or servicer
24 shall reply to the borrower.

25 Sec. 06.50.055. TRANSFER OF LOANS AND LOAN SERVICING. (a)
26 Unless otherwise authorized by the commissioner, a residential mort-
27 gage lender may not transfer the servicing of a residential mortgage
28 loan to, or accept the transfer of servicing of a residential mortgage
29 loan from, a person unless the person is either licensed under this

1 chapter or exempt from licensing under AS 06.50.010.

2 (b) The department shall adopt regulations concerning procedures
3 for transferring a residential mortgage loan, transferring the servic-
4 ing of a residential mortgage loan, and notifying the borrower of a
5 transfer. These regulations may not conflict with applicable federal
6 law.

7 Sec. 06.50.060. GROUNDS FOR DISCIPLINE. The following acts,
8 practices, and circumstances are grounds for discipline under AS 06.-
9 50.065:

10 (1) violating any provision of this chapter, a regulation
11 adopted under this chapter, or an order issued by the commissioner
12 under this chapter or AS 06.01;

13 (2) being convicted of a crime that involves fraud or
14 dishonesty or committing an unethical act as defined by regulation
15 adopted by the department;

16 (3) making a material or intentional misstatement in a
17 application for an initial or a renewal license;

18 (4) being found insolvent or filing bankruptcy;

19 (5) failing to disburse money in accordance with an agree-
20 ment or misusing, misapplying, or misappropriating escrow or trust
21 money;

22 (6) failing to deliver, or account for, property to its
23 owner when the delivery or accounting is required by law;

24 (7) having an occupational or professional license of a
25 lender or servicer or of one of its partners, officers, or principals
26 revoked, suspended, or otherwise restricted by a licensing authority;

27 (8) failing to issue a deed of reconveyance if the issuance
28 is required by law;

29 (9) failing to timely pay a fee, penalty, or fine under

1 this chapter;

2 (10) failing to maintain, preserve, or present for
3 examination books, records, or other documents required to be kept by
4 this chapter or by regulation adopted under it;

5 (11) refusing to permit an examination by the department,
6 refusing to cooperate with an investigation by the department, or
7 failing to comply with a subpoena;

8 (12) consistently underestimating the closing costs for
9 residential mortgage loan transactions; and

10 (13) failing to make a residential mortgage loan in accor-
11 dance with a written loan commitment if the applicant has met the
12 residential mortgage lender's criteria for creditworthiness and has
13 timely satisfied the residential mortgage lender's other conditions
14 for receiving the loan.

15 Sec. 06.50.065. METHODS OF DISCIPLINE. In addition to actions
16 authorized by AS 06.01.030, upon finding that a person has committed
17 an act or practice, or that a circumstance exists, that is a ground
18 for discipline under AS 06.50.060, the department may

19 (1) deny the issuance of an initial license;

20 (2) deny the renewal of a license;

21 (3) for a knowing and intentional violation of this chap-
22 ter, a regulation adopted under it, or an order issued by the commis-
23 sioner under this chapter or AS 06.01, impose a civil penalty of not
24 more than \$2,500 for a single occurrence and not more than \$25,000 for
25 multiple occurrences; for a continuing violation, each day that the
26 violation exists is considered a single occurrence;

27 (4) for a negligent violation of this chapter, a regulation
28 adopted under it, or an order issued by the commissioner under this
29 chapter or AS 06.01, impose a civil penalty of not more than \$500 for

1 a single occurrence and not more than \$5,000 for multiple occurrences;
2 for a continuing violation, each day that the violation exists is
3 considered a single occurrence;

4 (5) revoke, suspend for a period of time, or place con-
5 ditions or restrictions on the exercise of a license; and

6 (6) appoint a receiver for the residential mortgage lender
7 in accordance with AS 06.50.070.

8 Sec. 06.50.070. APPOINTMENT OF A RECEIVER. (a) Notwithstanding
9 the provisions of AS 06.50.075, if a residential mortgage lender or
10 servicer intentionally or with gross negligence fails to service a
11 residential mortgage loan in accordance with this chapter or the terms
12 of a servicing agreement, the department may appoint a receiver over
13 that loan.

14 (b) The department may require the receiver to post a bond or
15 provide other security for the receiver's proper performance. A bond
16 or other security may not be required if the department or its employ-
17 ee is acting as a receiver.

18 (c) The receiver has authority to take possession of, hold, and
19 disburse assets of the lender or servicer that are necessary to prop-
20 erly service the loan and to reimburse the department for expenses
21 incurred in connection with the receivership. The receiver may not
22 make any payments without the approval of the commissioner.

23 Sec. 06.50.075. CONTINUED ACTIVITY AFTER REVOCATION OR SUS-
24 PENSION. (a) For a period not to exceed six months following a final
25 order of the department suspending or revoking a license, a person
26 whose license has been suspended or revoked may

27 (1) continue to service a residential mortgage loan in
28 accordance with a servicing contract in existence at the time of the
29 suspension or revocation; or

1 (2) issue a residential mortgage loan in accordance with a
2 commitment made to an applicant before the suspension or revocation.

3 (b) Not later than 30 days after receiving notice from the
4 department that a residential mortgage lender's license has been
5 suspended or revoked, a person who holds a commitment for a residen-
6 tial mortgage loan made by that lender before the date of the suspen-
7 sion or revocation may withdraw the loan application without incurring
8 liability. Within 30 days after withdrawal of an application under
9 this subsection, the residential mortgage lender shall return to the
10 applicant all payments made in connection with that loan application.

11 Sec. 06.50.990. DEFINITIONS. In this chapter, unless the con-
12 text requires otherwise,

13 (1) "affiliate" means a person who, directly or indirectly
14 through one or more intermediaries, controls, is controlled by, or is
15 under common control with a licensee;

16 (2) "borrower" means a person who receives a residential
17 mortgage loan from a residential mortgage lender, and includes an
18 assignee or successor in interest to that loan;

19 (3) "commissioner" means the commissioner of the Department
20 of Commerce and Economic Development or the commissioner's designee;

21 (4) "department" means the Department of Commerce and
22 Economic Development;

23 (5) "depository institution" means a bank, savings bank,
24 mutual savings bank, savings and loan association, credit union, or a
25 trust bank, whose deposits are insured by the federal government;

26 (6) "license" means an original or a renewal license issued
27 under this chapter authorizing the holder to act as a residential
28 mortgage lender or as a residential mortgage servicer;

29 (7) "licensee" means a person who has been issued a license

1 under this chapter;

2 (8) "originating" means taking applications, credit, and
3 appraisal information, processing, and underwriting, committing, and
4 funding conventional or government-insured residential mortgage loans;

5 (9) "person" means an individual, sole proprietorship,
6 association, partnership, corporation, or any other group of individu-
7 als, however organized;

8 (10) "residential mortgage lender" or "lender" means a
9 person who, directly or indirectly, makes or offers to make a residen-
10 tial mortgage loan, or charges or receives a commission, fee, or bonus
11 in connection with the originating of a residential mortgage loan, and
12 includes an assignee of, purchaser of, or successor in interest to a
13 residential mortgage loan;

14 (11) "residential mortgage loan" means a loan on real prop-
15 erty located in this state that is designed for occupancy by four or
16 fewer families and that is secured by a first mortgage, deed of trust,
17 or land contract;

18 (12) "residential mortgage servicer" or "servicer" means a
19 person who, directly or indirectly, services or offers to service a
20 residential mortgage loan or who charges or receives a commission,
21 fee, or bonus in connection with the servicing of a residential mort-
22 gage loan;

23 (13) "service" means to receive four or more payments of
24 principal and interest on a residential mortgage loan, or money that
25 is paid into an escrow or trust, or to act on these payments or on
26 their delinquency, on behalf of a residential mortgage lender.

27 * Sec. 2. AS 06.50.015, 06.50.020, 06.50.045, 06.50.050, and 06.50.990,
28 enacted by sec. 1 of this Act, take effect immediately under
29 AS 01.10.070(c).

1 * Sec. 3. The remainder of sec. 1 of this Act takes effect January 1,
2 1991.