



# **3 Hour SC SAFE Comprehensive: Financing Residential Real Estate**

## **COURSE MANUAL**

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## **South Carolina State Content - Part 1**

### **South Carolina Department of Consumer Affairs and South Carolina Board of Financial Institutions**

#### **OVERVIEW**

In this lesson students will learn about the South Carolina Department of Consumer Affairs, the South Carolina State Board of Financial Institutions, as well as some of the laws and regulation definitions pertaining to mortgage lending. Students will have an understanding of the importance of and be well versed in the responsibilities, limitations, and structure of both the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions. Additionally, students will become familiar with some of the more important laws and regulation definitions relating to mortgage lending in South Carolina, including the South Carolina Mortgage Lending Act and the High Cost Consumer Protection Code, as well as provision in Chapter 3 and Chapter 10 of Title 37 in the South Carolina Code of Law.

#### **Learning Objectives**

After reviewing this lesson, students should:

- Be able to discuss the authority, structure, and responsibilities of the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions
- Understand different definitions included in the state laws and regulations
- Know some of South Carolina Laws and Regulations as they pertain to mortgage loan originators

#### **South Carolina Department of Consumer Affairs**

There are two very important regulatory offices in South Carolina that, among other things, pertain to mortgage lending and licensing; the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions. We will first start by discussing the South Carolina Department of Consumer Affairs and later move on to discussing the South Carolina State Board of Financial Institutions.

In 1974, the South Carolina Consumer Protection Code [Title 37] established the South Carolina Department of Consumer Affairs (SCDCA or Department for short). The Department of Consumer Affairs is meant to administer and enforce the Consumer Protection Code. As South Carolina's consumer protection agency, the Department is also entrusted to enforce Title 37 as well as other regulatory statutes. The Department's goal is to protect consumers in South Carolina.

The South Carolina Department of Consumer Affairs website, <http://www.consumer.sc.gov/>, has a lot of useful information regarding its purpose, structure, and responsibilities. We will go over some of this information below.

The South Carolina Department of Consumer Affairs helps:

- Formulate and modify consumer laws, policies and regulations
- Regulate the consumer credit marketplace
- Resolve complaints arising out of the production, promotion, and sale of consumer goods and services in the state (whether or not credit is involved)
- Promote a healthy competitive business climate with mutual confidence between buyers and sellers. The

Consumer Protection Code authorizes the South Carolina Department of Consumer Affairs to do the following:

- Analyze and mediate individual complaints
- Investigate business practices if a pattern of fraud is suspected
- Inform about complaints filed against a business
- Educate consumers about unfair and deceptive practices
- Take legal action to prevent persons from violating the Code and prohibit unconscionable conduct.

However, the Consumer Protection Code does **not** authorize the Department to:

- Advise a consumer of whether a particular business is reputable
- Recommend a company with which a consumer should do business
- Handle complaints against a state agency

In order for the Department to do what the Code has authorized it to do, it has had to be structured in a specific way. The Commission on Consumer Affairs governs the South Carolina Department of Consumer Affairs as well as appoints the Administrator and the Department itself is structured into six different parts, each with different and specific responsibilities:

- Administration – This division includes:
  - The resources necessary to support the operation of the Department.
  - The appointed person who is the Administrator. The Administrator runs the daily operations of the Department and is entrusted with advising the legislature and Governor on consumer issues and the state of credit in South Carolina.
  - Procurement, human resources, accounting and information technology.
- Consumer Services
  - The consumer services division handles consumer complaints that are made regarding the businesses that are regulated by the Department as well as complaints that are unregulated. Complaints against businesses that are not regulated by the Department are referred to the appropriate jurisdiction.
  - The division's mediation process helps alleviate the courts' workload and saves consumers and businesses money as going through the courts usually entails a larger cost.
- Consumer Advocacy
  - The consumer advocacy division specifically deals with the insurance interests of consumers. To do so, the division reviews insurance rate requests that are filed with the Department of Insurance with the goal of generating savings for both consumers and businesses.
  - The division has regulatory responsibility over various different organizations as denoted in many acts:
    - Continuing Care Retirement Communities (Act 97 of 1989),
    - Discount Medical Plan Organizations (Act 377 of 2006),
    - Professional Employer Organizations (Act 169 of 1933), and
    - The regulation of the sale of cosmetic contact lens without a prescription from an authorized dispenser.
- Public Information and Education
  - The public information and education division's sole purpose is to provide the consumer, businesses and media with education and educational resources. This division provides information on consumer rights and responsibilities and provides presentations, webinars, and other resources helpful to the consumer.
  - A few of the helpful webinar topics covered by the division and available to consumers include webinars on:
    - Identity theft
    - Debt collection
    - Foreclosures
    - Credit
  - The division also takes calls from consumers regarding consumer scams and laws and provides press releases and consumer education brochures.

- Identity Theft Unit
  - The identity theft division handles the administration and enforcement of the South Carolina's Financial Identity Fraud and identity Theft Protection Act as well as other state acts pertaining to identity theft and the protection of consumers.
  - The identity theft division also provides education and outreach for consumers. However, the division's main focus is on identity theft.
  - The division also provides warnings to the public regarding new scams.
  - Additionally, the division provides step-by-step guidance on what to do if a consumer is a victim of identity theft.
- Legal Division
  - The legal division administers and enforces the law governing consumer credit transactions.
  - The legal division also has regulatory responsibility over other industries:
    - Motor Clubs (Act 400 of 1984),
    - Rent-to-own businesses (Act 121 of 1985),
    - Physical Fitness Services (Act 165 of 1985),
    - Pawnbrokers (Act 491 of 1988),
    - Mortgage Loan Brokers (Act 544 of 1988),
    - Telephone Solicitations (Act 656 of 1988),
    - Express Warranties on Motor Vehicles (Act 142 of 1989),
    - Athlete Agents (Act 456 of 1990; Act No. 300 of 2004),
    - Motor Vehicle Subleasing (Act 131 of 1991),
    - Loan Brokers (Act 452 of 1992),
    - Motor Fuel Pricing (Act 161 of 1993),
    - Prize Promotions (Act 483 of 1994),
    - Prepaid Legal Services (Act 328 of 2000),
    - Consumer Credit Counseling (Act 111 of 2005)
  - The division also provides consumer law guidance to the financial industry, magistrates, attorneys, and law enforcement agencies, and serves as the legal counsel for the Board of Financial Institution's Consumer Finance Division, of which we will discuss later on in this lesson.

As you can see, the South Carolina Department of Consumer Affairs has many responsibilities and handles various different aspects pertaining to the financial sector in an effort to protect South Carolina's consumers. Another important regulatory office is that of the South Carolina State Board of Financial Institutions. We will review its responsibilities and structure next.

### **South Carolina State Board of Financial Institutions**

The South Carolina State Board of Financial Institutions (the Board) is another important office in South Carolina pertaining to consumer protection. According to their website, the South Carolina Board of Financial Institutions' mission is to serve the people of South Carolina by preserving a sound financial community and protecting the borrowing public by ensuring that the state banking and consumer finance laws and regulations are followed. The State Board is responsible for the supervision, licensing, and examination of:

- All State chartered banks
- Savings and loans associations
- Savings banks
- Credit unions
- Trust companies

- Development corporations
- Consumer finance companies
- Deferred presentment companies
- Check cashing companies

Title 34 of South Carolina's Code of Laws establishes the South Carolina State Board of Financial Institutions. Title 34 Section 34-1-20 details the structure of the Board.

- The Board is composed of eleven members.
- Members of the Board cannot serve more than two consecutive four-year terms.
- The code denotes requirements that must be met in order to be appointed to the board:
  - One of the members is the State Treasurer who also is the chairman of the Board.
  - The rest of the members of the Board are appointed by the Governor with the advice and consent of the Senate.
  - Four of the members must be involved in banking and recommended by the South Carolina Bankers Association.
  - One of the members must be recommended by the association of supervised lenders.
  - One of the members must be engaged in the mortgage lending business and recommended by the Mortgage Banker Associations of the Carolinas.
  - One of the members must be engaged in the licensed consumer finance business as a restricted lender or a supervised lender and recommended by the Independent Consumer Finance Association.
  - Two of the members must be engaged in the cooperative credit union business and recommended by the State Cooperative Credit Union League.
  - One of the members must not be affiliated with a financial organization and serve as a representative of the consumers in the South Carolina.

Title 34, Chapter 1, entitled State Board of Financial Institutions, refers to the Board and states that it has the power to supervise all banks and building and loan associations and provide regulations and instructions for the direction, control and protection of all such institutions, the conservation of their assets and the liquidation thereof [§34-1-60].

Additionally, no bank, building and loan association, savings and loan association or savings bank can be granted a charter of be established without the written approval of the Board [§34-1-70].

If a bank, building and loan association, savings and loan association, or savings bank wants to become established, it is up to the Board to commence an investigation and determine whether the applicant is qualified to operate the institution, has complied with the law, and whether they would serve the public interest. Furthermore, the Board must conduct an annual study regarding the capital reserve position of all financial institutions and intermediaries subject to its supervision and report its findings to the General Assembly. The Board must include any recommended legislation within the report to the General Assembly [§34-1-130].

Title 34 also denotes that the Board must have an examining department. The Board must appoint a Commissioner of Banking that will be in charge of the examining department. It is the Commissioner of Banking that reports criminal violations to the Board [§34-1-90].

If anyone is deemed guilty of obstructing the Commissioner of Banking or his assistants, he or she will be subject to imprisonment for no more than one year, or fined no more than one thousand dollars, or both, in the discretion of the court [§34-1-120].

It is the South Carolina State Board of Financial Institutions that legally permits mortgage lenders and loan originators operating pursuant to a license to make mortgage loans, to engage in a mortgage lending activity authorized for licensed mortgage lender and loan originators by law or by regulation of an agency given supervisory authority over those institutions [§34-1-110 (A)(5)].

In fact, the Board is given a lot of legal power to permit various financing related activity. The Board, by law, may permit all of the following: [§34-1-110 (A)(1)(2)(3)(4)(5)(B)]

- State-chartered banks to engage in any activity authorized for national banks and by federal law or regulation of the Comptroller of the Currency or for state-chartered savings and loan associations by this title [34] or regulation or operational instruction of the State Board of Financial Institutions

- State-chartered savings and loan associations to engage in any activity authorized by federally chartered savings and loan associations by federal law or regulation of the Office of Thrift Supervisions or for the state-chartered banks by this title [34] or regulation or operational instruction of the State Board of Financial Institutions
- Cooperative credit unions to engage in any activity authorized for federally chartered credit unions by federal law or by regulation of the National Credit Union Administration
- Consumer finance companies operating pursuant to a license to make supervised loans as provided in Part 5, Chapter 3, Title 37, to engage in any lending activity authorized for supervised financial organizations by law or by regulation of any agency given supervisory authority over those institutions, except where otherwise restricted by statute
- The Board permits mortgage lenders and loan originators operating pursuant to a license to make mortgage loans as provided in Chapter 22, Title 37, to engage in a mortgage lending activity authorized for licensed mortgage lenders and loan originators by law or an agency given supervisory authority over those institutions, except where otherwise restricted by statute.

As you can see, the South Carolina State Board of Financial Institutions is entrusted with a lot of responsibility. In order to oversee and complete all that the Board is responsible for, the Board is efficiently divided into two parts. The Board's website ([www.bofi.sc.gov](http://www.bofi.sc.gov)) summarizes the division as follows:

- The Banking Division - supervises and regulates State chartered banks, trust companies, savings banks, and credit unions.
- The Consumer Finance Division - is responsible for regulating licensing and compliance examination for non-depository consumer lending, deferred presentments services, check cashing, mortgage lending, mortgage servicing and all of their employees doing loan originating or loan modification activity.
  - The following must be licensed by the Consumer Finance Division:
    - Consumer loans made by non-bank/depository institutions with interest rates exceeding 12% APR
    - A person engaging in the business of deferred presentment services (payday lending)
    - Non-depository entities performing check cashing activities where fees are charged or other consideration is made
    - Mortgage lending or servicing by non-depository entities
    - Subsidiaries of depository institutions that are not entirely owned and regulated by one of the federal banking agencies
    - Loan originators employed by licensed lenders/servicers

The Board, just as the Department, plays a large role in matters pertaining to mortgage lending and licensing in the state of South Carolina. Both of these institutions are responsible for various aspects of the process of receiving and keeping a mortgage loan originator license.

Officially, the South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators. The South Carolina Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and it regulates mortgage broker loan originators.

It depends on the type of business operations which licensing jurisdiction, whether the Department of Consumer Affairs or the State Board of Financial Institutions, the individual will belong to.

We will delve into what these regulations look like with regards to applying for, obtaining, and maintaining a license as a mortgage loan originator later in the course. For now, we will go over the various Acts enacted that provide the requirements that both of these offices enforce and monitor when it comes to mortgage lending, licensing, and overall consumer protection. We will turn to these laws next.

### **South Carolina Law and Regulation Definitions - The South Carolina Mortgage Lending Act**

The South Carolina Mortgage Lending Act is now part of the South Carolina Consumer Protection Code, or Title 37. Chapter 22 of Title 37 contains the regulations pertaining to Mortgage Lending. We will discuss these here. If you would like to access the law itself, it can be accessed through the South Carolina Legislature website: [www.scstatehouse.gov](http://www.scstatehouse.gov).

Before we get into what the law states about mortgage lending and licensing itself in South Carolina, we should review some of the terminology and its legal definitions that we will encounter while discussing this law and many other laws

pertaining to mortgage lending. These definitions can be found in Chapter 22 of the Consumer Protection Code. The following provides the legal definition to terminology that is most commonly used in the mortgage industry as it is intended to be defined in the state of South Carolina.

For the purposes of South Carolina law regarding mortgage lending:

- “Act as a mortgage broker” means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:
  - (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,
  - (ii) engaging in table funding of a mortgage loan, or
  - (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. “Act as a mortgage broker” also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b). [§37-22-110(1)]
- “Act as a mortgage lender” means to engage in the business of making or servicing a mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan. [§37-22-110 (2)]
- “Board” means the State Board of Financial Institutions [[§37-22-110(6)].
- “Borrower” means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person’s ownership interest in the dwelling is or is to be subject to the security interest [§37-22-110(7)].
- “Branch manager” means the natural person who is in charge of and who is responsible for the business operations of a branch office of a licensee [§37-22-110(8)].
- “Branch office” means an office of the licensee that is separate and distinct from the licensee’s principal office [§37-22-110(9)].
- “Clerical or support duties” mean administrative functions after the receipt of an application by a licensed mortgage originator or lender, such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include [§37-22-110(10)(a)(b)]:
  - the receipt, collection, and distribution common for the processing or underwriting of a residential mortgage loan; or
  - any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- “Commissioner” means the designee of the State Board of Financial Institutions for the purposes of licensing and regulation of mortgage lenders and mortgage loan originators pursuant to this chapter [§37-22-110(11)].
- “Employee” means a natural person who has an employment relationship, acknowledged by both the natural person and the mortgage lender, and is treated like an employee for purposes of compliance with the federal income tax laws [§37-22-110(15)].
- “Exempt person” means: [§37-22-110(18)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]
  - an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
  - a depository institution or subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
  - an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;

- a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;
- an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
  - a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or
  - any other person deemed exempt pursuant to the Secure and Fair Enforcement Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.
- "Individual servicing a mortgage loan" means an employee of a mortgage lender licensed in South Carolina that: [§37-22-110(22)(a)(b)(c)]
  - collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage;
  - works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or
  - otherwise finalizes collection through the foreclosure process.
- "Licensee" means a person who is licensed pursuant to this chapter [§37-22-110(23)].
- "Loan correspondent" means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan: [§37-22-110 (25)(a)(b)(c)]
  - underwrite the mortgage loan written by their employees;
  - approve the mortgage loan; and
  - fund the mortgage loan utilizing an unrestricted warehouse or credit line
  - A loan correspondent is not a mortgage lender

*(This particular definition was added to this chapter after the Mortgage Lending Act was amended)*
- "Loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan.
  - The definition of "loan originator" does not include an exempt person described in item (18) or a person solely involved in extensions of credit relating to timeshare plants, as that term is defined in Section 101(53D) of Title 11, United States Code.
  - The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are "loan originators" as that term is defined in the SAFE ACT pursuant to Section 1508 of Title V of the housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator. [§37-22-110 (26)]
- "Mortgage broker" means a person who acts as a mortgage broker, as that term is defined in time (1)" [§37-22-110].



- “Registered loan originator” means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by the federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the National Mortgage Licensing System and Registry. [§37-22-110(36)]

The definitions that we just reviewed, which are included in the South Carolina Mortgage Lending Act, are important for the understanding of certain laws and regulations that pertain to mortgage lending in South Carolina.

The South Carolina Mortgage Lending Act of 2009 not only provides definitions to some of the more important terms in the mortgage lending industry, it also provides the requisites to become a licensed mortgage lender, loan originator, or someone acting as a mortgage lender.

The South Carolina Mortgage Lending Act explains that it is unlawful for a person, other than an exempt person, doing business in South Carolina to: [§37-22-120A(1)(2)]

- act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title; or
- circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of this chapter

The law also states that it is unlawful for a person to employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to this chapter. An exempt person is not subject to this subsection. [§37-22-120(B)]

The license of a loan originator is not effective during a period that the person is not employed by a mortgage lender licensed pursuant to this chapter. [§37-22-120(C)]

If a loan originator ceases to be employed by a mortgage lender licensed pursuant to this chapter, the loan originator and the mortgage lender by whom that person is employed promptly shall notify the commissioner in writing. The mortgage lender’s notice must include a statement of the specific reason or reasons for the termination of the loan originator’s employment. The reason for termination is confidential information and must not be released to the public. [§37-22-120(D)]

A loan originator must not be employed simultaneously by more than one mortgage lender licensed pursuant to this chapter. [§37-22-120(E)]

Independent contractors, except for exempt persons, must be licensed separately. Processors and underwriters who are independent contractors must be licensed as provided in section 37-22-110(34)(c). [§37-22-120(F)]

Aside from providing definitions to important terminology and the requirements for licensing of a mortgage lender or loan originator, the law also delineates reasons for revocation suspension, and termination of a license.

The South Carolina Mortgage Lending Act also provides a list of prohibited activities and demands participation in the national mortgage registry.

It also specifies that the act can be enforced by the commissioner of the Consumer Finance Division of the Board of Financial Institutions. On May 19, 2017, amendments were made to the South Carolina Mortgage Lending Act, which went into effect on September 1, 2017. The amendments include, among others,

- the addition of the definition of “loan correspondent” to the list of defined terminology in the act;
- updated the pre-licensing and continuing education requirements for mortgage loan originators;
- placed new requirements on surety bond amounts;
- enabled a mortgage loan originator’s residence be deemed a branch office, and
- reconciled the term “exempt person” with persons deemed exempt in the federal SAFE Act.

It was this amendment that added the requirement for South Carolina Law content in both pre-licensing and continuing education for mortgage loan originators.

We will be delving into the details the South Carolina Mortgage Lending Act provides for mortgage loan originator license requirements, qualifications, and the application process later in the course.

## **South Carolina Law and Regulation Definitions - The High Cost and Consumer Home Loan Act**

Another important act in South Carolina pertaining to mortgage lending is the High Cost and Consumer Home Loan Act.

- The Act was added to the Consumer Protection Code, or Title 37, under Chapter 23 in 2003.
- The Act sets up protections for South Carolina homeowners and creates a category for high cost home mortgages with a threshold.
- The Act also provides definitions for relevant terminology. We will review some of these terms first and then discuss the provisions of the Act.

According to the High Cost and Consumer Home Loans Act: [§37-23-20]:

- “Affiliate” means a company that controls, is controlled by, or is under common control with another company, as described in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841, et seq.), as amended [§37-23-20(1)].
- “Annual percentage rate” means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.) and the regulations promulgated under it by the Federal Reserve Board, both as amended [§37-23-20(2)].
- “Broker” or “mortgage broker” means a person or organization in the business of soliciting, processing, placing, or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others. A broker or mortgage broker also includes a person or organization who brings borrowers or lenders together to obtain mortgage loans or renders a settlement services. [§37-23-20(3)]
- “Consumer home loan” means a loan in which: [§37-23-20(4)(a)(b)(c)]
  - the borrower is a natural person;
  - the debt is incurred by the borrower primarily for personal, family, or household purposes; and
  - the loan is secured by a mortgage on real estate upon which is located or is to be located a structure designed principally for occupancy of from one to four families and that is or is to be occupied by the borrower as the borrower’s principal dwelling.
- “Conventional conforming discount points” means loan discount points knowingly paid by the borrower for the purposes of reducing, and which in fact result in a bona fide reduction of, the interest rate applicable to the loan, so long as the home loan has an annual percentage rate that does not exceed the conventional mortgage rate by more than one percentage point [§37-23-20(5)]
- “Conventional mortgage rate” means the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater [§37-23-20(6)]
- “Conventional prepayment penalty” means a prepayment penalty or fee that may be collected or charged in a home loan and that is authorized by law other than by this chapter, provided the home loan (a) does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and (b) does not permit prepayment fees or penalties that exceed two percent of the amount prepaid [§37-23-20(7)]
- “Flipping” a consumer home loan means the making of a consumer home loan that refinances within forty-two months an existing consumer home loan of the borrower when the new loan does not have a reasonable, tangible net benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower’s circumstances. [§37-23-30(8)].
- “High-cost home loan” means: [§37-23-20(9)(a)(i)(ii)(iii)(iv)(v)(b)]
  - a loan, other than an open-end credit plan or a reverse mortgage transaction, in which the:
    - principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association;
    - borrower is a natural person;
    - debt is incurred by the borrower primarily for personal, family, or household purposes;

- loan is secured by either a security interest in a residential manufactured home, as defined in Section 37-1-201(24) which is to be occupied by the borrower as the borrower's principal dwelling, or a mortgage on real estate upon which there is located or there is to be located a structure designed principally for occupancy from one to four families and which is or is to be occupied by the borrower as the borrower's principal dwelling; and
  - terms of the loan exceed one or more of the thresholds as defined in item (15); or
  - be an adjustable rate mortgage at the fully indexed rate assuming a fully amortizing repayment schedule that would exceed one more of the thresholds as defined in item (15)
- "Obligor" means each borrower, co-borrower, cosigner, or guarantor obligated to repay the loan [§37-23-20(11)]
- "points and fees" means: [§37-23-20 (13)(a)(b)(c)(d)]
  - items required to be disclosed pursuant to Sections 226.4(a) and 226.4(b) of Title 12 of Code of Federal Regulations, as amended, except interest or the time-price differential;
  - charges for items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";
  - compensation paid directly by the borrower to a mortgage broker not otherwise included in the subitem (a) or (b);
  - the maximum prepayment fees and penalties that may be charged or collected pursuant to the terms of the loan documents. Interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government-sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, is not considered a prepayment fee or penalty
- "Threshold" means either (A) or (B) in a loan transaction, whichever is applicable: [§37-23-20(15)(A)(B)(i)(ii)(iii)(C)(i)(ii)(iii)]
  - (A) Without regard to whether the loan transaction is a "residential mortgage transaction" as the term "residential mortgage transaction" is defined in Section 226.2 (a)(24) of Title 12 of the Code of Federal Regulations, as amended, the annual percentage rate of the loan at the time the loan is consummated is such a rate that the loan is considered to be a "mortgage" pursuant to Section 152 of the Home Ownership and Equity Protection Act of 1994, as amended, and regulations adopted pursuant to it by the Federal Reserve Board, including Section 226.32 of Title 12 of the Code of Federal Regulations, as amended, except with regard to a mortgage or loan secured by a nonreal estate manufactured housing lien, the term "threshold" means the annual percentage rate of the nonreal estate secured manufactured housing line at the time the mortgage or loan is consummated exceeds by more than ten percentage points the yield on United States Treasury securities having comparable periods of maturity as of the fifteenth day of the month immediately preceding the month in which the application of extension of credit is received by the lender;
  - (B) the total points and fees payable by the borrower at or before the loan closing exceed:
    - five percent of the total loan amount if the total loan amount is twenty thousand dollars or more;
    - the lesser of eight percent of the total loan amount or one thousand dollars if the total loan amount is less than twenty thousand dollars; or
    - three percent of the total loan amount for nonreal estate secured manufactured housing transactions if the total loan amount in the nonreal estate secured housing transaction is twenty thousand dollars or more;
  - (C) Except that the following discount points and prepayment fees and penalties are excluded from the calculation of the total points and fees payable to the borrower:
    - up to and including two conventional conforming discount points payable by the borrower in connection with the loan transaction but only if the interest rate from which the loan's interest rate is discounted does not exceed by more than one percentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which is greater; or

- up to and including one conventional conforming discount point payable by the borrower in connection with the loan transaction, but only if the interest from which the loan's interest rate is discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, whichever is greater;
- a conventional prepayment penalty.

The above terminology is important in order to understand what the High-Cost and Consumer Home Loan Act provides for the mortgage lending industry in South Carolina. Section 37-23-30 of the High-Cost and Consumer Home Loan Act denotes what a high-cost home loan agreement should and should not contain. A high-cost home loan agreement may **not** contain:

- a provision that allows the lender to call a loan at his or her discretion [§37-23-30(1)]
- a balloon payment [§37-23-30(2)]
- negative amortization [§37-23-30(3)]
- an increase in the rate after default [§37-23-30(4)]
- requirements of more than two periodic payments to the loan to be paid in advance from the loan proceeds provided to the borrower [§37-23-30(5)]
- a charge to the consumer for fees to modify, renew, extend, or amend a high-cost home loan [§37-23-30(6)]
- provide the consumer with a choice of law provisions to avoid South Carolina law [§37-23-30(7)]

The Act also provides limitations on lenders of high-cost home loans. The lender of a high-cost home loan may not:

- make a high-cost home loan without first receiving written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling on the advisability of the loan transaction [§37-23-40(1)]
- provide a high-cost home loan without determining first whether the consumer can repay the loan [§37-23-40(2)]
- finance, directly or indirectly, prepayment penalties [§37-23-40(3)(a)]
- finance, directly or indirectly, more than 2.5 percent in points or fees [§37-23-40(3)(b)]
- charge fees or points to refinance a loan made by the lender [§37-23-40(4)]
- pay a contractor for a home improvement loan from the proceeds of a high-cost home loan [§37-23-40(5)]
  - the check must be payable jointly to the borrower and contractor [§37-23-40(5)(a)] or
  - through a third party escrow agent [§37-23-40(5)(b)]

Additionally, the High Cost and Consumer Home Loan Act protects consumer home loans by listing prohibited acts. According to section 37-23-70:

- A lender may not engage knowingly or intentionally in the unfair act or practice of "flipping" a consumer loan [§37-23-70(A)]
- A lender may not finance directly or indirectly credit life, disability, debt cancellation, or unemployment insurance, or other life or health insurance premiums, except that insurance premiums calculated and paid on a monthly basis are not considered to be financed by the lender [§37-23-70(B)]
- A lender may not recommend or encourage default on an existing loan or other debt before and in connection with the closing planned or closing of a consumer home loan that refinances all or a portion of the existing loan or debt [§37-23-70(C)]
- At the time of application, the loan originator or mortgage broker must provide the consumer with information as to where the consumer can file a complaint [§37-23-70(D)]

If a lender violates this section and is found to have committed one of the prohibited acts discussed above, he or she is subject to actual damages and a penalty in an amount determined by the court of no less than \$1,500 and no more than \$7,500 for each transaction. However, there is a statute of limitations of 6 years, after which the borrower may no longer bring action to the lender for the violation [§37-23-70(F)].

The Act also specifies the types of disclosures consumers must have access to during the lending process. These disclosures will help educate the consumer of what is occurring during the lending process.

At the time when the borrower receives the Loan Estimate (LE) and prior to the loan closing, the broker or mortgage broker must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form that includes the following: [§37-23-75 (A)(1)(2)(3)(4)]

- The dollar amount of the yield spread premium and the percentage yield spread premium in relation to the loan amount;
- An itemization of the dollar amounts for points, fees, and commissions with a combined total given
- Dollar amount total of both of the item above
- If the loan is an adjustable rate mortgage, the listing of the schedule for when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract.

The disclosure form must include a signature line for the borrower to acknowledge that he has received the disclosures and that they have been explained to him or her [§37-23-75(B)].

Together, the above provisions help protect South Carolina consumers with regards to their mortgage loans.

Chapter 3 and Chapter 10 of the South Carolina Consumer Protection Code also add other provisions that enable the protection of consumers and their mortgage loans. We will turn to these next.

## **South Carolina Law and Regulation Definitions - Consumer Protection Code. Chapter 3 and Chapter 10**

### **Chapter 3**

Chapter 3 of South Carolina's Consumer Protection Code, or Title 37, focuses on loans. As such, it provides definitions of terminology having to do with loans.

According to Chapter 3 a "consumer loan" is:

- A loan made by a person regularly engaged in the business of making loans which: [§37-3-104(a)(b)(c)(d)]
  - A debtor is a person other than an organization;
  - The debt is incurred primarily for a personal, family, or household purpose;
  - Either the debt is payable in installments or a loan finance charge is made; and
  - Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.
- A consumer loan does not include a loan secured by a first lien or equivalent security interest in real estate [§37-3-105]

Chapter 3 defines "loan" to include:

- The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
- The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;
- The creation of debt pursuant to a lender credit card or similar arrangement; and
- The forbearance of debt arising from a loan. [§37-3-106]

Chapter 3 defines "Lender" to include an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment [§37-3-107(1)].

The chapter defines “principal” as the total of: [§37-3-107(3)(a)(b)(c)(i)(ii)]

- The net amount paid to, receivable by, or paid or payable for the account of the debtor;
- The amount of any discount excluded from the loan finance charge; and
- To the extent that payment is deferred:
  - Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in the net amount paid; and
  - Additional charges permitted by Chapter 3

Chapter 3 defines a “finance charge” as the sum of: [§37-3-109 (1)(a)(b)]

- all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including interest or any amount payable under a point, discount or other system of charges, premium or other charge for any guarantee or insurance protecting the lender against the debtor’s default or other credit loss
- charges incurred for investigating the collateral or creditworthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made but excluding fees and charges paid to persons registered as mortgage loan brokers.

The above definitions provide clarity regarding certain aspects pertaining to different loans, but Chapter 3 also includes provisions that allow lenders to do certain things during the lending process.

- Chapter 3 enables the lender to collect closing costs, including fees or premiums for title, appraisals, insurances, and fees and charges to persons registered as mortgage loan brokers. [§37-3-202(d)(i)(ii)(iii)(iv)(v)(e)(f)(2)].
- The chapter also enables a lender to refinance a borrower’s loan, or “unpaid balance” and charge a finance charge for doing so. [§37-3-205].
- If a loan requires a rate schedule, it must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate [§37-3-305(2)]

Aside from allowing lenders to conduct themselves a certain way and providing clarity regarding some of the terminology important to the world of consumer loans, this Chapter includes other provisions that add accountability to those involved in mortgage lending.

Chapter 3 grants the State Board of Financial Institutions the authority to examine periodically the loans, businesses, and records of every licensee [§37-3-506(1)].

This means that at any point the South Carolina State Board of Financial Institutions can demand access to the offices, places of business, and records of any lender in order to determine whether the lender has acted in accordance to the law. Knowing that this is the case further motivates licensees to behave in accordance to South Carolina and Federal law.

Furthermore, Chapter 3 states that any provisions that conflict with the SAFE Act must be changed in order for them to be interpreted as those in the SAFE Act and that all disclosures and advertisements must be in compliance with the Truth-in-Lending Act [37-3-301, 304].

## **Chapter 10**

Chapter 10 of the Consumer Protection Code deals with “miscellaneous loan provisions.” This Chapter contains additional provisions regarding loans that were not covered in Chapter 3 and other chapters in Title 37.

Chapter 10 states that prior to closing a loan, the creditor must know the borrower’s preference for an attorney that will represent him or her in the closing of the loan. The creditor must do the same regarding the borrower’s insurance agent for both hazard and flood insurance. [§37-10-102(a)] In order to comply with such, the creditor has the following options:

- He or she can include the preference information on the credit application [§37-10-102(1)]
- Provide written notice to the borrower with the information when the notice is being delivered no later than 3 days after the application is received [§37-10-102(2)]

This provision enables the consumer to be in charge of decision-making regarding the costs associated with representation in both the loan itself and the home. The consumer has the right to shop around for these services and does not need the permission of the creditor to pick his or her attorney or insurance agent.

Furthermore, a consumer is not punished for paying his or her debt in full. Chapter 10 states that for loans of 150,000 dollars or less, a debtor can prepay in full the debt without incurring any penalty as long as the debt is represented by a personal, family, or household purpose loan agreement that is secured in whole or in part by a first or junior lien on real estate and the aggregate of all sums advanced does not exceed 150,000 dollars.

[§37-10-103]

If a loan is agricultural in its purpose or under 25,000 dollars, and the debtor wants to prepay in full, the maximum loan finance charge that is allowed is 18% per annum, calculated according to the actuarial method. [§37-10-104]

This chapter also provides an additional protection to the consumer by denoting that the maximum rate of interest per year is 6%, except upon written contracts wherein, by express agreement, any interest may be charged.

The chapter also defines both the terms legal rate of interest and lawful rate of interest. Whenever the term legal rate of interest is used or lawful rate of interest is used in a contract it is meant to mean the rate specified in Section 34-31-20, which states that in all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum. [§34-31-20(A), §37-10-106(1)(2)]

If the provisions discussed above are in some way violated, the person violating the chapter can incur a penalty determined by the court of no less than \$1,500 and no more than \$7,000. The statute of limitations for the violation is 3 years. [§37-10-105]

Chapter 3 and Chapter 10 of the South Carolina Consumer Protection Code add to the protection of consumers by including provisions having to do with consumer loans that give more power to the consumer and add a level of accountability for mortgage lenders and brokers.

We have discussed different South Carolina laws pertaining to consumer protection. Next, we will discuss in more detail some of the provisions found in the Mortgage Lending Act and in South Carolina's Consumer Protection Code that pertain specifically to mortgage loan originators.

## **LESSON SUMMARY**

There are two important regulatory offices in South Carolina:

- South Carolina Department of Consumer Affairs
- South Carolina State Board of Financial Institutions

In 1974, Title 37 established the South Carolina Department of Consumer Affairs (SDCA or Department) - administers and enforces the Consumer Protection Code. The department helps:

- Formulate and modify consumer laws, policies and regulations
- Regulate the consumer credit marketplace
- Resolve complaints arising out of the production, promotion, and sale of consumer goods and services in the state (whether or not credit is involved)
- Promote a healthy competitive business climate with mutual confidence between buyers and sellers.

The Consumer Protection Code authorizes the South Carolina Department of Consumer Affairs to do the following:

- Analyze and mediate individual complaints
- Investigate business practices if a pattern of fraud is suspected
- Inform about complaints filed against a business
- Educate consumers about unfair and deceptive practices
- Take legal action to prevent persons from violating the Code and prohibit unconscionable conduct.

The Department is divided into 6 parts:

- Administration Division
- Consumer Services Division
- Consumer Advocacy Division

- Public Information and Education Division
- Identity Theft Division
- Legal Division

The South Carolina State Board of Financial Institution (the Board) serves the people of South Carolina by preserving a sound financial community and protecting the borrowing public by ensuring that state banking and consumer finance laws and regulations are followed.

Title 34, Chapter 1 gives The Board the responsibility of supervision, licensing, and examination of:

- All State chartered banks
- Savings and loans associations
- Savings banks
- Credit unions
- Trust companies
- Development corporations
- Consumer finance companies
- Deferred presentment companies
- Check cashing companies

The Board consists of 11 appointed members that cannot serve more than 2 consecutive 4-year terms.

The Board is divided into two parts:

- The Banking Division
- The Consumer Finance Division

### **The South Carolina Mortgage Lending Act**

Chapter 22 of Title 37 contains the regulations pertaining to the Mortgage Lending Act.

The Act defines various terms associated with mortgage lending, including:

- act as a mortgage broker
- act as a mortgage lender
- board
- borrower
- branch manager
- branch office
- clerical or support duties
- commissioner
- employee
- exempt person
- individual servicing a mortgage loan
- licensee
- loan correspondent
- loan originator
- mortgage broker
- registered loan originator



The Mortgage Lending Act explains that it is unlawful for a person to act as a mortgage lender or circulate or use advertising without being licensed. It also makes it unlawful for someone to hire a loan originator unless that originator is licensed.

If a mortgage loan originator is not employed by a mortgage lender, his or her license is not effective.

A loan originator cannot be employed by two lenders at the same time.

The Mortgage Lending Act also provides the requirements for licensing and delineates reasons for revocation, suspension and termination of a license.

### **High Cost and Consumer Home Loan Act**

The Act defines various terms associated with loans including:

- affiliate
- annual percentage rate
- broker
- consumer home loan
- conventional conforming discount points
- conventional mortgage rate
- conventional prepayment penalty
- flipping
- high-cost home loan
- obligor
- points and fees
- threshold

A high-cost home loan agreement cannot:

- allow the lender to call a loan at his or her discretion
- have a balloon payment
- have negative amortization
- increase the rate after default
- require more than two periodic payments in advance

The lender of a high-cost home loan cannot

- make the loan without receiving written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling regarding the loan
- provide a loan without first determining that the borrower can repay the loan
- finance prepayment penalties
- finance more than 2.5% in points and fees
- charge fees or points to refinance a loan
- pay a contractor for a home improvement loan from the proceeds of the loan

The Act also provides the following prohibited acts:

- a lender cannot engage in the unfair act or practice of “flipping”
- a lender cannot finance credit life, disability, debt cancellation, or unemployment insurance, or other life or health insurance premiums

- a lender cannot recommend or encourage default of existing loans or other debt
- the lender must provide the consumer with information as to where a consumer can file a complaint at the time of application

Any violation of this Act makes the lender subject to actual damages and a penalty determined by the court of no less than \$1,500 and no more than \$7,500 for each transaction.

The Act also specifies the types of disclosure consumers must have access to:

- When the consumer receives the Loan Estimate and before the loan closes, the broker must disclose in writing the amount being earned on the loan
- The disclosure must include:
  - The yield spread premium
  - Dollar amounts for points, fees, and commissions
  - Total amount for both of the above
  - If an ARM, the schedule for when the loan resets, listing of monthly payment owed for each changed that is allowed by the terms of the contract
  - Signature line for the borrower

### **Chapter 3 - Consumer Protection Code**

Chapter 3 of Title 37 focuses on loans. It clarifies various terms relating to loans, including:

- Consumer loan
- Loan
- Lender
- Principal
- Finance charge

Chapter 3 also:

- Enables a lender to collect closing costs, including fees and premiums for title, appraisals, insurances, and fees and charges to persons registered as mortgage loan brokers.
- Enables lenders to refinance borrower's loans and charge a finance charge for doing so
- Grants the South Carolina State Board of Financial Institutions the authority to examine periodically the loans, businesses, and records of every licensee
- States that any provisions in conflict with the SAFE Act are to be changed to be in accordance to the SAFE Act
- States that all disclosures and advertisements must be in compliance with the Truth in Lending Act

### **Chapter 10-Consumer Protection Code**

Chapter 10 of the Consumer Protection Code deals with "miscellaneous loan provisions."

Chapter 10 states that:

- Prior to closing, the creditor must know the borrower's preference for an attorney and insurance agent
  - The creditor can know this by either including the information during the credit application
  - Or including the information when the notice is being delivered to the borrower 3 days after the application is received
- A consumer cannot be punished for paying his or her debt in full
- If a loan is agricultural in purpose or under \$25,000 and the consumer wants to prepay in full, the maximum loan finance charge allowable is 18% per annum

- The maximum rate of interest per year is 6%
- The term legal rate of interest or lawful rate of interest means 8 ¼ % per annum

Violating the provisions in this chapter can result in a penalty determined by the court of no less than \$1,500 and no more than \$7,000. The statute of limitations for bringing action to these violations is 3 years.

## **South Carolina State Content - Part 2**

### **South Carolina License Law and Regulation**

#### **OVERVIEW**

In this lesson we will review details on South Carolina laws and regulations pertaining to licensing. We will go over what activities the law states require a license, what is required of persons wanting to become licensed as mortgage loan originators or mortgage lenders, what makes a person qualified for a mortgage loan originator license as well what the application process to get a license is like in South Carolina. Additionally, we will review what the law states regarding maintaining a mortgage loan originator license once one is obtained. And finally, we will also go over what the laws and regulations state are the grounds for denying a license.

#### **Learning Objectives**

After reviewing this lesson, students should be able to:

- Know what activities require a mortgage loan originator license
- Understand what the law requires of persons wanting to become licensed as mortgage loan originators and what the application process is like for a license
- Know the requisites to maintain a mortgage loan originator license as well as the reasons for the denying of a license

#### **South Carolina License Law and Regulation**

Before we begin this lesson, it is important to understand that there are two main titles and chapters in the South Carolina Code of Laws that pertain to mortgage lending: Title 37, Chapter 22, and Title 40, Chapter 58. What we will be predominantly reviewing below is what the law denotes in Title 37, Chapter 22, which is the Mortgage Lending Act. However, Title 40, Chapter 58, or the Licensing of Mortgage Brokers Act is also relevant. Title 40, Chapter 58 contains provisions that are almost identical to those provisions in Title 37, Chapter 22.

Their main difference, however, is the fact that Chapter 22 places regulatory authority on the Commissioner of the Consumer Finance Division of the State Board of Financial Institutions and Chapter 58 places regulatory authority on the Administrator of the Department of Consumer Affairs.

As you will recall, from the last section, both of these offices are South Carolina's regulatory authority for mortgage lending in the state. The South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators, while the Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and mortgage broker loan originators.

South Carolina provides specific laws and regulations pertaining to mortgage loan originators. These laws and regulations include activities that require licensure. Before we move on to discuss these, let's acquaint ourselves with what South Carolina law defines as a mortgage loan originator.

According to Chapter 22 of Title 37, also known as the Mortgage Lending Act, a loan originator means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition "loan originator" does not include an exempt person or a person solely involved in extensions of credit relating to timeshare plans. [§37-22-26]

This same chapter defines “act as a mortgage broker” to mean to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

- (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,
- (ii) engaging in table funding of a mortgage loan, or
- (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

“Act as a mortgage broker” also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service. [§37-22-1].

Since we will be discussing what must occur in order to obtain a license in this lesson it is convenient that Chapter 22 also defines what a licensee means. A “licensee” is defined as someone who is licensed pursuant to Chapter 22.

Title 37, Chapter 22, Section 260 gives the commissioner of the South Carolina State Board of Financial Institutions the regulatory authority to create new provisions necessary to put into effect the purpose of the chapter. Using this regulatory authority in order to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and with HUD rules, the South Carolina State Board of Financial Institutions added Article 4, regulations 15-64. The addition of these regulations to previous lending law were meant to clarify existing provisions in Chapter 22 as well as to ensure that the provisions were in line with federal laws. To that end, these regulations also define some relevant terminology: [Article 4 §15-64 (A)(2)(3)(4)(5)]

- Day - means all calendar days including Saturdays, Sundays and legal public holidays
- Employee for the purposes of compliance with the federal tax laws- means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.
- Notice - means written notification received by the Commissioner within (7) days of any change except as defined in Section 37-22-180 (A), which states that a licensee shall report to the commissioner a change of address of the principal place of business or branch office at least 7 days before the change. (We will go over this section later in the lesson.)
- Prior Written Consent - means written consent given by the Commissioner authorizing a change of control prior to that change of control taking place. To request authorization from the Commissioner, all information regarding acquisition via stock purchase or other device must be sent to the Commissioner at least 30 days prior to the change of control.

The definitions above are important to understand what Chapter 22 states are activities that require a license as well as what the requisites are for becoming licensed and remaining licensed in South Carolina. We will now turn to the chapter’s provisions regarding licensing.

### **Persons Required to be Licensed**

There are certain activities that persons cannot participate in if they are not licensed pursuant to Chapter 22. In the state of South Carolina, if you want to participate in the following activities, you must be a licensee [§37-22-120(A)(1)(2)(B)(C)]

- Act as a mortgage lender or, directly or indirectly engage in the business of a mortgage lender under any name or title
- Circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of Chapter 22
- Employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to Chapter 22
- Continue to conduct activities of a licensee if you are not employed by a mortgage lender that is licensed pursuant to Chapter 22

Thus, in accordance to state law, you must be a licensee if you want to participate in activities as a mortgage broker or lender. This includes advertising for any lending activity.

It is important to note that if you do obtain a license as a mortgage loan originator, but are not employed by a mortgage lender, you cannot practice mortgage origination activities. Additionally, Chapter 22 states that if you are licensed as a mortgage loan originator, but are not employed by a mortgage lender, you and the mortgage lender must notify the commissioner of the State Board of Financial Institutions in writing with a statement that explains the reasons for termination. [§37-22-120(D)] And, a loan originator must not be employed simultaneously by more than one mortgage lender that is licensed pursuant to Chapter 22. [§37-22-120(E)]

There are some exemptions to the above. Exempt persons are not required to have a license. In the last lesson, we reviewed what an “exempt person” means according to Chapter 22. Let’s quickly review this again:

“Exempt person” means: [§37-22-110(18)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]

- an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
- a depository institution or subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
- an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;
- a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person’s residence;
- an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
  - a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or
  - any other person deemed exempt pursuant to the Secure and Fair Enforcement Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

The persons and activities mentioned above are not required to have a mortgage lending license or a loan originator license. However, aside from those deemed exempt, anyone wanting to engage in mortgage broker activities as well as those activities mentioned at the beginning of this lesson must have a license in order to do so in the state of South Carolina.

In order to obtain a license to participate in these activities, you must go through the license application process. Next, we will discuss what this entails.

### **Licensee Qualifications and Application Process**

In order to obtain a mortgage loan originator license, an application for licensure must be filed with the commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions, on forms approved by the commissioner.

The Consumer Finance Division of the State Board of Financial Institutions focuses on regulating licensing and compliance examination for non-depository consumer lending, deferred presentment services, check cashing, mortgage lending, mortgage servicing and all of their employees doing loan originating or loan modifications. Thus, it is no surprise, that it is the commissioner of the Consumer Finance Division that is given a lot of authority in Chapter 22 when it comes to licensing in South Carolina; starting with the fact that applicants for licensure must submit their applications to him or her.

The application itself must include information that the commissioner considers necessary.

The following is information deemed necessary for the application of a license:

[§37-22-140(A)(1)(2)(3)(4)(i)(ii)(iii)(5)(6)(i)(ii)(iii)]

- name, address, and social security number or, if applicant, Employer Identification Number (EIN);
- form and place of organization, if applicable;
- proposed method of and locations for doing business, if applicable;
- qualification and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:
  - a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;
  - a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and
  - a conviction of, or plea of guilty or nolo contendere to a felony;
- financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and
- consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principle or a branch manager shall consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity:
  - by whom or by which the applicant is employed;
  - over which the applicant has control; or
  - as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

As stated above, along with the rest of the requisites, the applicant for licensure must undergo a national criminal record check, supported by fingerprints, by the FBI. The law states that the results of the checks must be reported to the commissioner and the Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges. The information gathered will be kept by the commissioner in accordance with applicable state and federal guidelines. [§37-22-240]

In addition to the above requirements, South Carolina law also requires that a person applying for licensure as a mortgage loan originator: [§37-22-140(B)(1)(2)(3)(4)(5)]

- have attained the age of at least 18 years;
- work for licensed mortgage lender;
- have satisfactorily completed pre-licensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content;
  - an applicant must pass the national test
  - if the applicant fails the test the applicant can retake the test as follows
    - After initial fail, applicant must wait 30 days before retaking the exam
    - After second attempt, applicant must wait 30 days before retaking the exam
    - After third attempt, the applicant must wait 180 days prior to retaking the exam

- have never had a loan originator license revoked in any governmental jurisdiction; and
- have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application of licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

So long as the applicant meets the legal requirements above, he or she should have no impediment in obtaining a license as a mortgage loan originator.

If the applicant is applying for licensure as a mortgage lender, the applicant must comply with the following at the time of application and all times after that:

[§37-22-140(C)(1)(2)(3)(4)(5)]

- If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.
- If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described above
- If the applicant is a corporation, at least one of its principal officers shall have the experience described above
- If the applicant is a limited liability company, at least one of its members or managers shall have the experience described above
- Instead of showing three years experience, an applicant may show proof of three years employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

These applicants must also identify one person meeting the above requirements to serve as their managing principal [§37-22-140(D)].

Though we have already reviewed a lot of the legal requisites for licensure, we have yet to mention some of the financial requirements posited by law on those that want to become licensed. Applying for a license does come with certain financial requisites and responsibilities.

When applying for licensure, whether as a mortgage lender or a mortgage loan originator, each applicant must pay a filing fee. [§37-22-140(E)]

- If the application is for licensure as a mortgage lender, the filing fee is set at \$1,000.00
- If the application is for a mortgage loan originator, the filing fee is \$50.00
  - These filing fees are in addition to the cost associated with obtaining credit reports and national fingerprint-based criminal history record checks.
  - And, if a loan originator changes employment a new license must be issued for a fee of \$25.00

Aside from a filing fee, there are also surety bond requisites mandated by the law. A surety bond is a legally binding contract that ensures the parties involved will meet their obligations. The surety bond is usually a three-way agreement between the principal, person who needs the bond, an obligee, person who requires the bond, and a surety company that sells the bond. The bond is meant to serve as a guarantee that the principal will do as required. If the principal does not, the bond will cover the outcome. A mortgage lender must post and maintain a surety bond in the amount determined by the commissioner of the South Carolina State Board of Financial Institutions. The amount is based on the total dollar amount of a mortgage loan subject to regulation by the commissioner in a calendar year pursuant to the following: [§37-22-140(F)]

- Dollar volume of mortgage loans from \$0-\$49,999,999, surety bond of \$50,000
- Dollar volume of mortgage loans from \$50,000,000 to \$249,999,999, surety bond of \$100,000
- Dollar volume of mortgage loans greater than \$250,000,000 surety bond of \$150,000

According to state law the surety bond of a mortgage lender can never be less than \$50,000. The surety bond itself must be executed by a surety company authorized by South Carolina state law. The surety bond must also be executed to the commissioner and must be for the use of the State for the recovery expenses, fines, and fees, or any of them, levied pursuant to Chapter 22 and for consumers who have losses or damages as a result of noncompliance with Chapter 22 by the mortgage lender. The full amount of the surety bond must be in effect at all times. Unless a new bond is filed with the surety company prior to the termination of the previous surety bond, the licensee's license is considered terminated. If the licensee's license expires based on bond termination, all licensed activity must stop, and the person must apply for a license again.

Additionally, any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements to obtain a license, upon payment of the applicable fee, meets the qualifications necessary to obtain a license as a loan originator. [§37-22-140(G)]

With regards to licensed mortgage lenders, each principal office and individual branch offices must be licensed pursuant to Chapter 22 and have individual licenses issued. A licensed mortgage lender must file an application form with the commissioner that identifies the address of the principal office and each branch office as well as the offices' branch managers. If necessary, the commissioner can license a personal residence of a loan originator as a branch office if it is located more than 70 miles from a commercial branch office location. The licensee fee for each branch office is \$150.00. [§37-22-140(H)]

We have so far mentioned the need for a license as a mortgage loan originator as well as a license for a mortgage lender, but what of those persons that act as both? The law states that a person who obtains a license as a mortgage lender, upon notice of the commissioner on a form prescribed by the commissioner, may act as a mortgage broker. However, there are times where mortgage lenders will act as mortgage brokers. The law states that a mortgage lender that also acts as a mortgage broker is not required to obtain a license as a mortgage broker, unless the person acts as a mortgage broker with regard to the majority of the mortgage loans reported on their Mortgage Call Report filed during the previous two quarters. [§37-22-140(K)]. Thus, if a mortgage lender predominantly acts as a mortgage broker, he or she needs a license as a broker. Furthermore, a mortgage lender acting as a mortgage broker must comply with the South Carolina Licensing of Mortgage Brokers Act, which states the different prohibited activities for someone who is a licensed mortgage broker and provides details as to how a mortgage broker should conduct themselves and their business. We will delve into the provisions of the Licensing of Mortgage Brokers Act (or Title 40, Chapter 58 of the South Carolina Code of Law) in the next lesson.

So as to keep distance from what an individual does while licensed versus what the government officially approves of or does not approve of, one of the provisions in Chapter 22 makes it a point to state that the fact that a licensee has been issued a license pursuant to the laws of the state does not mean that his or her services are approved by the State or state agency [§37-22-140(J)].

It is important to note that when completing and submitting your application along with other documentation, if any of the information provided and filed with the commissioner becomes inaccurate or incomplete, the licensee must promptly file a correcting amendment to the information contained in the document. [§37-22-140(M)]

Overall, the law denotes that if the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and warrant belief that the business is to be operated honestly, fairly and efficiently, the commissioner can issue a license to the applicant. However, if the commissioner does not believe this to be the case in part or its entirety, the commissioner can refuse to license the applicant and must notify him or her of the denial. [§37-22-140(l)] Therefore, the law really does leave it up to the commissioner to decide whether he or she believes an applicant should be licensed or not. Later in this lesson we will go into detail about what constitutes grounds for denying a license. Let's first discuss what the law states is necessary in order to maintain a license.

## **License Maintenance**

Aside from the financial responsibility of the application fee and the surety bond when qualifying or applying for licensure as a mortgage loan originator or mortgage lender, there are also other financial responsibilities and other requirements that the applicant or licensee must meet in order to maintain their license. We will turn to these next.

Chapter 22 explains that all licenses issued by the commissioner of the South Carolina State Board of Financial Institutions expire annually on the thirty-first day of December or on another date that the commissioner determines. This means that licensees must renew their license every year if they want to continue to practice mortgage loan originator activities that require a license in the state of South Carolina. The renewal period for licensees is from November first through December thirty-first annually or it can be another date that the commissioner sets. A licensee that wants to renew his or her license must submit an application to the commissioner in order to do so. Applications that are received after the renewal due date are considered late and subject to a late fee. [§37-22-150(A)(1)(2)]

According to Chapter 22, licenses can be renewed by paying to the commissioner a renewal fee as prescribed by the Board for each of the following:

- For a licensed mortgage lender, an annual renewal fee of no more than \$800 and no more than \$150 for each branch office
- For a licensed loan originator, the renewal fee is no more than \$50.00



If a license for a licensed mortgage lender is not renewed by the renewal date, a late fee of no more than \$500 as prescribed to the Board must be assessed. If a license for a licensed mortgage loan originator is not renewed during the renewal period, a late fee of no more than \$100 as prescribed by the Board must be assessed as a late fee. However, if the licensee fails to renew his or her license within 30 days after the date the license expires or fails to maintain a valid license, the commissioner will require that the licensee comply with the requirements denoted by law for obtaining an initial license as well as pay the fee that has accrued. [§37-22-150(B)]

*A good rule of thumb: always renew your license on time every year in order to avoid paying a fee or eventually having to go through the license application process all over again.*

The law also states that at any time, the commissioner can require each person with a license to furnish a national fingerprint-based criminal history check and a set of fingerprints in a form acceptable to the commissioner. If a person refuses to do so, it could constitute grounds for the commissioner to deny the licensee's license renewal as well as to refuse the renewal of the license of the person by which he or she is employed, over which he or she has control, or which he or she is the current or proposed managing principal or branch manager. [§37-22-150(C)]

Aside from a renewal fee, in order to renew a license as a mortgage loan originator there are yearly requirements the licensee must meet. To renew a license:  
[§37-22-160(A)(B)(C)(D)]

- A licensee must complete at least 8 hours of continuing professional education every year
  - Continuing education must include at least 1 hour of South Carolina Laws and Regulations
  - The completion of the continuing professional education must be reported to the commissioner every year
  - Licensees must maintain documentation of all courses completed
  - Documentation of the courses completed is subject to inspection by the commissioner for up to two years after the date of course completion
- Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.
- If a licensee fails to complete the continuing professional education before the license expiration date, his or her license expires and he or she will have to pay a penalty of no more than \$100.00 in addition to other fees that may have accrued.

It is important to note that all pre-licensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry before credit can be given to applicants or licensees. Applicants and licensees that successfully complete education or testing approved through the NMLS fulfill requirements of this State.

The law also imposes other responsibilities on licensees in order to maintain a license in good standing. For example: there are certain records that licensees must keep and certain information they must report while conducting everyday loan originating activities. A licensee must make and keep accounts, correspondence, memoranda, papers, books, and other records prescribed by the commissioner. [§37-22-210(C)(D), §40-58-65 (A)]

Licensees must preserve their records for at least 3 years, unless the commissioner says otherwise. These records are important and must be safely maintained. A licensee should develop, maintain, and test disaster recovery plans for all records that are maintained. If the records are somehow misplaced, incomplete or destroyed, the licensee could be subject to disciplinary action.

State law states that if a licensee chooses to maintain their records electronically, they can do so as long as these electronic records can be readily accessible for examination by the commissioner at any time. [§37-22-210(C)(1)(2)(D)].

In addition to the maintenance of the records just mentioned, licensees must also keep records in the form of a Mortgage Log. The Mortgage Log must contain the following information:

- Credit score of borrower
- Adjustable or fixed type of loan
- Term of loan
- Annual percentage rate of the loan
- Appraised value of the collateral

On the 31<sup>st</sup> of March of each year, each licensee must submit their mortgage log to the commissioner. If the licensee is late in their submission or the submission is incomplete, they are responsible for paying a fine of \$100.00 per day it is late or remains incomplete. The compilation of data received by the commissioner will then be organized and submitted to the Department where it will be prepared and made available to the public. This report will become available on June 13 of every year. A licensee must submit a correcting amendment to the information given to the commissioner if the information becomes incomplete or inaccurate.

As stated in the beginning of the lesson, the State Board of Financial Institutions put into place Article 4 Regulations 15-64 in an effort to add and clarify some of the provisions in Chapter 22. Pursuant to Section 37-22-210, regulations in Article 4 state that the Mortgage Log required of licensees must: [Article 4 Reg.15-64(D)(1)(a)(b)]

- Be completed electronically as required by the Consumer Finance Division. The Licensee is responsible for the costs associated with doing so.
- Include all mortgage loans or applications where a credit report is requested, regardless of whether a mortgage loan is originated or modified.

Additionally, Section 37-22-220 states that licensees must maintain records in a way that helps the commissioner determine whether the licensee is complying with the provisions of Chapter 22 and with federal laws. The recordkeeping system of a licensee will be deemed sufficient so long as the required information is available. These records do not need to be kept in the place of business where loans are made if the commissioner is given free and full access to the records wherever they may be. By March 31<sup>st</sup> of each year, licensees must file an annual report relating to all the mortgage loans made, serviced, or brokered. The report should include the following information:

- First and subordinate lien loans originated by licensee and closed in the name of another party;
- First and subordinate line loans originated by another party and closed in the name of licensee;
- First and subordinate lien loans originated by and closed in the name of licensee;
- First and subordinate lien loans originated by and closed in the name of another party but funded by licensee;
- Loans purchased by licensee;
- First and subordinate lien loans serviced by licensee;
- Loans owned with and without servicing rights;
- Loans sold with and without servicing rights;
- Loans paid off before and at maturity;
- Unpaid loans at the beginning and end of the reporting year;
- Delinquent loans that are 30-59, 60-89, and ninety days or more delinquent, of all the loans the licensee owned as of December 31<sup>st</sup>
- Loans in foreclosure as of December 31<sup>st</sup> and foreclosed in the previous calendar year by licensee;
- Mortgage loans charged against reserve for loan losses as a result of foreclosures during the reporting year; and
- Loans repurchased during the previous calendar year

The annual report must also include the total gross revenue earned in the State under the license, the total dollar amount of points paid to the licensee by borrowers first and subordinate lien mortgage loans, total dollar amount of points paid to brokers by the licensee on first and subordinate lien mortgage loans, including yield spread premiums, and the lending institution, maximum amount available, outstanding balance, and expiration date of licensee's four largest warehouse lines of credit during the previous calendar year. [§37-22-220 (A)(B)(C)(1)(2)(3)(4)(5)(6)(7)(7)(9)(10)(11)(12)(13)(14)(D)].

The State Board of Financial Institutions' Article 4, Regulations 15-64 adds to this section of Chapter 22 the following:

- The annual report required by §37-22-220 must include a Mortgage Call Report that includes: [Article Reg.15-64(D)(2)(a)(b)]
  - A loan activity report submitted electronically on a quarterly basis as required by the Nationwide Mortgage Licensing System and Registry by the mortgage lender or servicer for all locations and loan originators
  - A corresponding financial condition report submitted electronically as required by the Nationwide Mortgage Licensing System and Registry.

As already noted earlier, Section 37-22-140(M) states that if any information contained in a document submitted to the commissioner becomes inaccurate or incomplete, the licensee must promptly file a correcting amendment with the commissioner. Article 4 states that, pursuant to this provision, the applicant must supply the required information to the Consumer Finance Division of the South Carolina State Board of Financial Institutions within 120 days of the initial submission or the application will be abandoned as incomplete. [Article 4 Reg.15-64(E)]. Thus, “promptly” in this case means that the correcting amendment must be filed with the commissioner within 120 days of the original submission.

In addition to keeping records of their activity and in an effort for licensees to be held accountable for their actions and to reduce the incidence of mortgage fraud, the law also mandates that licensees must always clearly display the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry on all mortgage loan forms, solicitations, or advertisements including business cards or websites and any other documents furnished in connection with a mortgage loan transaction. [§37-22-210(F)] By doing so, it is easy for consumers to look up the licensee’s activity history as well as enabling the records of their transactions to be tracked down. Overall, this requirement on licensees is intended to bring a new level of security to the prevention of fraud in the mortgage industry.

Article 4, Regulations 15-64 adds that The Nationwide Mortgage Licensing System and Registry unique identifier for licensed mortgage lenders or servicers, licensed branch offices, and licensed mortgage loan originators must be displayed on all mortgage loan applications. However, only the unique identifier of the licensed mortgage lender or servicer is required to be displayed on all other mortgage loan forms. The unique identifier of a licensed mortgage lender or servicer or licensed mortgage loan originator must also be used in all advertising. [Article 4 Reg.15-64 (B)(1)(2)]

It is important to remember that it is also the responsibility of the licensee to report any changes that may occur to the commissioner. A licensee must report to the commissioner a change of address of the principal place of business or a branch office at least seven days before the change. Change of address notification of a licensed location must be accompanied by a fee of \$25.00. A mortgage lender licensed pursuant to Chapter 22 must display in plain view in its principal office and in each branch the license issued by the commissioner. A loan originator licensed pursuant to Chapter 22 must display in each branch office in which mortgage loans are originated a copy of the license issued by the commissioner. [37-22-180(A)(B)]

Important to note is the fact that included in the notification, should be a plan of withdrawal with timetables for the disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records after that. [§37-22-210(G)].

So far what we have discussed has had to do with requirements for a person to obtain a mortgage license as well as what a licensee must do in order to maintain their license once they have obtained one.

Let us now move on to determining what may prevent an applicant from obtaining a license or what may force someone who already has a license to either lose or suspend his or her license.

### **Grounds for Denying a License**

Aside from having the power to issue a license, the commissioner of the South Carolina State Board of Financial Institutions also has the power to deny, suspend, revoke, or refuse to issue or renew a license. We will now discuss the powers the commissioner has in South Carolina regarding the denial, suspension, revocation, or refusal to issue a license. As you will see, the commissioner can do various different things to licensees if he or she deems it necessary.

The commissioner may deny, suspend, revoke or refuse to issue a license if he or she finds that both: [§37-22-200(A)(1)(2)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]

- The order is in the public interest; and
- The applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee:
  - Has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;
  - Has violated or failed to comply with a provision of this chapter or order of the commissioner;
  - Within the past ten years has been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related business or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.

- A permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practice involving financial services or financial services related business;
  - Is the subject of an order of the commissioner denying, suspending, or revoking that person's license;
  - Is subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
  - Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements, pursuant to Chapter 22
  - Has been the executive officer or controlling shareholder or owned a controlling interest in a financial service or financial services related business that has been subject to an order or injunction described above
  - Has failed to pay the proper filing or renewal fee pursuant to Chapter 22 or a fine, penalty, or fee imposed by any governmental entity. However, the commissioner may enter only a denial order, and the commissioner shall vacate the order when the deficiency is corrected; or
  - Has falsely certified attendance or completion of hours at an approved education course.
- Furthermore, the commissioner may postpone or suspend the license of a licensee pending final determination of a proceeding. Once the commissioner enters the order to postpone or suspend a license, he or she must notify the applicant or licensee promptly that the order has been entered and provide the licensee an explanation as to why it was entered in the first place. The commissioner must also explain in the notice the procedure for requesting a hearing before the Administrative Law Court. If both the licensee does not request a hearing and if the commissioner does not request a hearing, the order remains in effect until it is modified or vacated by the commissioner. [§37-22-200(B)]
  - The commissioner may also impose an administrative penalty on a licensee, or any member, partner, officer, director, or other person occupying similar status or performing similar functions on behalf of a licensee for violation of Chapter 22. The administrative penalty, whether for the licensee or any other person, cannot exceed \$10,000.00 for each violation of the chapter by a licensee. [§37-22-200(C)]
  - Additionally, the commissioner can order a person to cease from a prohibited action. If the person who has been ordered to cease from the prohibited action fails to request a contested case hearing, or if the person requests a hearing and it is denied or dismissed and the person continues to engage in the action, the person is subject to an administrative penalty that cannot exceed \$20,000.00 for each violation of the commissioner's order. [§37-22-200(D)]

If a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the commissioner, may surrender his or her license and the rights and privileges that come with it and is no longer eligible to receive, or submit an application for, licensure for a period of time established by the commissioner. [§37-22-200(F)]

If the commissioner believes that the licensee or another person has violated Chapter 22 or that facts exist that would be the basis for an order against a licensee or other person, the commissioner can investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. In other words, if a licensee seems to have violated a provision in this chapter, the commissioner has the right to do what he or she must do in order to uncover evidence of the violation. Whatever the cost may be for investigating or examining, as long as it is "reasonable," will be charged to the licensee. The commissioner may also require the licensee or other person to submit a national and state fingerprint-based criminal record check and a set of fingerprints in connection to the investigation or examination. If the licensee or other person refuses to do so, they will be subject to disciplinary action. [§37-22-200(G)]

The commissioner may also subpoena documents and witnesses and compel their production and attendance, to examine under oath all persons whose testimony the commissioner considers relative to the person's business and require the production of books, papers, or other materials. At the licensee's expense, the commissioner may also conduct routine examinations of the books and records of a licensee to determine their compliance to Chapter 22. The commissioner can cooperate and share information with an agency of this State, or other states, or with the federal government concerning behavior that is regulated by Chapter 22. He or she can also participate in examinations with these agencies. [§37-22-200(G)(H)(I)(J)]

If the commissioner finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in an activity that results in the entry of an order suspending or withdrawing the license of a licensee, the commissioner can prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for a time of his choosing. The commissioner can also require a person to pay to a borrower or other natural person amounts received by the person or its employees in violation of Chapter 22. [§37-22-200(K)(L)]

As reviewed, the commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions has a lot of discretion with regards to licensing. However, one should note that this does not mean that he or she is not held accountable. The commissioner must still report information to the Board as well as the Nationwide Mortgage Licensing System and Registry. In fact, any order issued by the commissioner regarding Chapter 22, must be reported to the Nationwide Mortgage Licensing System and Registry. [§37-22-200(M)].

It is important to state that if any of the provisions we have mentioned thus far are violated, state law imposes disciplinary action on the violator. A person who violates any of the provisions we have discussed and found in Chapter 22 of Title 37 of the South Carolina Code of Law, is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500.00 or imprisoned not more than 6 months, or both, for each violation. Each transaction involving the unlawful making or servicing of a mortgage loan is a separate offense. [§37-22-230]

## **Conclusion**

After reviewing this lesson, you should now be familiar with what the law requires you to do if you would like to apply to become a mortgage loan originator as well as what is required of you once you have obtained your license.

## **LESSON SUMMARY**

### **Important definitions:**

**“loan originator”**- a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition “loan originator” does not include an exempt person or a person solely involved in extensions of credit relating to timeshare plans.

**“act as mortgage broker”**- for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

- (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,
- (ii) engaging in table funding of a mortgage loan, or
- (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

“Act as a mortgage broker” also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service.

**“licensee”**- someone who is licensed pursuant to Chapter 22

**“Day”**- all calendar days including Saturdays, Sundays, and legal public holidays

**“Employee”**- a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

**“Notice”**- written notification received by the Commissioner within (7) days of any change

**“Prior Written Consent”**- written consent given by the Commissioner authorizing a change of control prior to that change of control taking place. To request authorization from the Commissioner, all information regarding acquisition via stock purchase or other device must be sent to the Commissioner at least 30 days prior to the change of control.

## **Persons Required to be Licensed**

Activities that require a license:

- Act as a mortgage lender or, directly or indirectly engage in the business of a mortgage lender under any name or title
- Circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of Chapter 22
- Employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to Chapter 22
- Continue to conduct activities of a licensee if you are not employed by a mortgage lender that is licensed pursuant to Chapter 22

A loan originator cannot be employed by more than one mortgage lender.

The only persons that can be exempt of having a license are those deemed as “exempt persons.”

## **License Qualifications and Application Process**

Information necessary for an application for licensure:

- name, address, and social security number or, if applicant, Employer Identification Number (EIN);
- form and place of organization, if applicable;
- proposed method of and locations for doing business, if applicable;
- qualification and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:
  - a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;
  - a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and
  - a conviction of, or plea of guilty or nolo contendere to a felony;
- financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and
- consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant’s fingerprints in a form acceptable to the commissioner.

To obtain a license as a mortgage loan originator a person must:

- have attained the age of at least 18 years;
- work for licensed mortgage lender;
- have satisfactorily completed pre-licensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content;
  - an applicant must pass the national test
  - if the applicant fails the test the applicant can retake the test as follows
    - After initial fail, applicant must wait 30 days before retaking the exam
    - After second attempt, applicant must wait 30 days before retaking the exam
    - After third attempt, the applicant must wait 180 days prior to retaking the exam

- have never had a loan originator license revoked in any governmental jurisdiction; and
- have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application of licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

To obtain a license as a mortgage lender:

- If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.
- If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described above
- If the applicant is a corporation, at least one of its principal officers shall have the experience described above
- If the applicant is a limited liability company, at least one of its members or managers shall have the experience described above

Instead of showing three years experience, an applicant may show proof of three years employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

Fees for application:

- If the application is for licensure as a mortgage lender, the filing fee is set at \$1,000.00
- If the application is for a mortgage loan originator, the filing fee is \$50.00
- if a loan originator changes employment a new license must be issued for a fee of \$25.00

#### **Surety bonds:**

A mortgage lender must post and maintain a surety bond in the amount determined by the commissioner of the South Carolina State Board of Financial Institutions. The amount is based on the total dollar amount of a mortgage loan subject to regulation by the commissioner in a calendar year pursuant to the following:

- Dollar volume of mortgage loans from \$0-\$49,999,999, surety bond of \$50,000
- Dollar volume of mortgage loans from \$50,000,000 to \$249,999,999, surety bond of \$100,000
- Dollar volume of mortgage loans greater than \$250,000,000 surety bond of \$150,000

According to state law the surety bond of a mortgage lender can never be less than \$50,000.

The full amount of the surety bond must be in effect at all times.

It is important to remember that the law requires licenses to be issued for the principal office as well as each branch office.

If necessary, the commissioner can also issue a license to a loan originator's home as a branch office if it is more than 70 miles from a commercial branch office.

If a mortgage lender acts as a mortgage broker, he or she does not need a license. However, if the mortgage lender acts as a mortgage broker for the majority of his or her mortgage loans, then he or she requires a license as a mortgage broker.

When submitting an application, if any information is inaccurate or incomplete, you must file a correcting amendment with the commissioner.

#### **License Maintenance**

All licenses expire annually and must be renewed.

The renewal period for licensees is from November 1<sup>st</sup> through December 31<sup>st</sup>.

If you do not renew within the renewal period, you are subject to a late fee.

Licenses can be renewed by paying to the commissioner a renewal fee as prescribed by the Board for each of the following:

- For a licensed mortgage lender, an annual renewal fee of no more than \$800 and no more than \$150 for each branch office
- For a licensed loan originator, the renewal fee is no more than \$50.00

If a license for a licensed mortgage lender is not renewed by the renewal date, a late fee of no more than \$500 as prescribed to the Board must be assessed.

If a license for a licensed mortgage loan originator is not renewed during the renewal period, a late fee of no more than \$100 as prescribed by the Board must be assessed as a late fee.

If the licensee fails to renew his or her license within 30 days after the date the license expires or fails to maintain a valid license, the commissioner will require that the licensee comply with the requirements denoted by law for obtaining an initial license as well as pay the fee that has accrued.

To renew a license a licensee also has to:

- Complete at least 8 hours of continuing professional education every year
  - Continuing education must include at least 1 hour of South Carolina Laws and Regulations
  - The completion of the continuing professional education must be reported to the commissioner every year
  - Licensees must maintain documentation of all courses completed
  - Documentation of the courses completed is subject to inspection by the commissioner for up to two years after the date of course completion
- Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.
- If a licensee fails to complete the continuing professional education before the license expiration date, his or her license expires and he or she will have to pay a penalty of no more than \$100.00 in addition to other fees that may have accrued.
- All pre-licensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry before credit can be given to applicants or licensees. Applicants and licensees that successfully complete education or testing approved through the NMLS fulfill requirements of this State.
- Licensees must also preserve for 3 years records containing accounts, correspondence, memoranda, papers, books, etcetera regarding their everyday mortgage loan originating activities.

Licensees must also keep and submit a Mortgage Log on March 31<sup>st</sup> of every year containing the following:

- Credit score of borrower
- Adjustable or fixed type of loan
- Term of loan
- Annual percentage rate of the loan
- Appraised value of the collateral

For everyday this log is late or incomplete, the licensee is responsible for paying an \$100.00 fee.

The log must be completed electronically and include all loans and applications where credit is requested.

Any information contained in documents submitted to the commissioner that is inaccurate must be corrected with the submission of a correcting amendment within 120 days of initial submission to the commissioner.

Licensees, whether mortgage lenders or loan originators must always display their NMLS unique identifier on all loan applications as well as all advertisements.

Any changes in addresses must be reported to the commissioner in at least 7 days from the change.



## **Grounds for Denying a License**

The law gives the commissioner of the South Carolina State Board of Financial Institutions a lot of discretion when it comes to determining who can be licensed. If the commissioner believes that the applicant should not be licensed, for any reason, then that applicant will not be licensed.

The commissioner may deny, suspend, revoke, or refuse to issue a license if he or she finds that both:

- The order is in the public interest; and
- The applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee:
  - Has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;
  - Has violated or failed to comply with a provision of this chapter or order of the commissioner;
  - Within the past ten years has been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related business or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.
  - A permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practice involving financial services or financial services related business;
  - Is the subject of an order of the commissioner denying, suspending, or revoking that person's license;
  - Is subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
  - Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements
  - Has been the executive officer or controlling shareholder or owned a controlling interest in a financial service or financial services related business that has been subject to an order or injunction described above
  - Has failed to pay the proper filing or renewal fee or a fine, penalty, or fee imposed by any governmental entity. However, the commissioner may enter only a denial order, and the commissioner shall vacate the order when the deficiency is corrected; or
  - Has falsely certified attendance or completion of hours at an approved education course.

The commissioner can also:

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred
- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions of Chapter 22

The commissioner must report information to the Board and any order issued by the commissioner to the Nationwide Mortgage Licensing System and Registry.

Disciplinary action is imposed by state law to any licensee that violates any of the provisions in Chapter 22.

- violators are guilty of a misdemeanor
- can be fined up to \$500.00 or imprisoned for up to 6 months or both for each violation

## **South Carolina State Content - Part 3**

### **Compliance and Disciplinary Action**

#### **OVERVIEW**

In this lesson we will review South Carolina law as it pertains to licensee behavior. We will go over what the law denotes as prohibited conduct and practices as well as what the law states is required conduct for licensees. We will also review fees and charges associated with being a licensee and the disclosures and agreements licensees will come across in their daily originating activities. Furthermore, we will go over how to advertise in the mortgage lending industry in accordance to state law. Lastly, we will discuss what South Carolina law states about disciplinary action, including notifications, hearings, and appeals; the suspension, revocation and rescissions of licenses; penalties and fines; and civil and criminal liability.

#### **Learning Objectives**

After reviewing this lesson, students should be able to:

- Recognize prohibited conduct and practices for licensees
- Know the different disclosures and agreements licensees encounter in their activities as mortgage loan originators
- Know how what is required of licensees if they want to advertise for business
- Understand what state law states disciplinary action should be for licensees that violate state provisions

#### **Compliance**

As mentioned previously, there are two main titles and chapters in the South Carolina Code of Laws that pertain to mortgage lending and licensing: Title 37, Chapter 22, and Title 40, Chapter 58. What we will be predominantly reviewing below is what the law denotes in Title 37, Chapter 22, which is the Mortgage Lending Act. However, we will also be covering some of the provisions in Title 40, Chapter 58, or the Licensing of Mortgage Brokers Act. Title 40, Chapter 58 contains provisions that are almost identical to those provisions in Title 37, Chapter 22.

Their main difference, however, is the fact that Chapter 22 places regulatory authority on the Commissioner of the Consumer Finance Division of the State Board of Financial Institutions and Chapter 58 places regulatory authority on the Administrator of the Department of Consumer Affairs. As you will recall, from a previous section, both of these offices are South Carolina's regulatory authority for matters relating to mortgage lending services in the state. The South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators, while the Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and mortgage broker loan originators.

#### **Prohibited Conduct and Practices: Required Conduct**

So far, we have focused on what one must do in order to apply for a mortgage lending license or mortgage loan originator license in the state of South Carolina as well as what one must do in order to maintain a license once it has been obtained.

We will now turn to what the law provides regarding conduct and behavior for those who have obtained a license.

Below we will review what the law states are prohibited practices and conduct of a person that is licensed as a mortgage loan originator.

Title 37, Chapter 22 states that the following are prohibited activities that are a violation of state and federal law. [§37-22-90(A)(1)(2)(3)(4)(5)(6)(7)(8)(9)(a)(b)(10)(a)(b)(c)(11)(12)(13)(14)(15)(16)(17)(B)]

*(Section 40-58-70 also lists prohibited activities, most of which match those below):*

- In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person licensed pursuant to Chapter 22, in the course of a mortgage loan origination, to:
  - Misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;
  - To refuse improperly or fail to issue a satisfaction of a mortgage pursuant to Section 29-3-310;
  - Fail to account for or deliver to a person entitled to receive funds, documents, or other things of value obtained in connection with a mortgage loan including money provided by a borrower for a real estate appraisal or credit report, which the mortgage lender or loan originator is not entitled to retain under the circumstances;
  - Pay, receive or collect in whole or in part any commission, fee, or other compensation for a mortgage loan origination in violation of this chapter including any unlicensed person other than an exempt person;
  - Charge or collect a fee or rate of interest or to make or service a mortgage loan with terms or conditions or in a manner contrary to the provisions of this chapter
  - Advertise mortgage loans including rates, margins, discounts, points, fees, commissions, or other material information including material limitations on the loans, unless the person is able to make the mortgage loans available as advertised to qualified applicants;
  - Fail to disburse funds in good faith and in accordance with a written commitment or agreement to make a mortgage loan that has been accepted by the borrower;
  - Engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person;
  - Fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:
    - Requested from the third party in writing by the mortgage lender or an employee of the mortgage lender; and
    - Performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender
  - Influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. This item does not prohibit a mortgage lender or servicer from asking the appraiser to do one or more of the following:
    - Consider additional appropriate property information
    - Provide further detail, substantiation, or explaining for the appraiser's value conclusion; or
    - Correct errors in the appraisal report;
  - Fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act and regulations adopted pursuant to them and the state law;
  - Fail to provide within a reasonable time, upon written request of a borrower, a payment history statement in a form easily understood by the borrower including payment dates and amounts and charges within the twelve months preceding the month which the request is received and the total amount unpaid as of the end of the period covered by the statement;
  - Take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than five thousand dollars;
  - Fail to provide disclosures as required by the state or federal law or collect any fee before providing required disclosures;
  - Fail to comply with Chapter 22 or other state or federal law including rules and regulations applicable to business regulated by this chapter;
  - Falsely advertise or misuse names in violation of 18 U.S.C. Section 709 (False advertising or misuse of names to indicate Federal Agency) or state law; or

- Use any trade name or insignia of membership in an organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, business card, stationery, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.
- Charge fees for services rendered as a mortgage broker without disclosing these fees to the applicant as required by federal and state law [§40-58-75(C)].
- A violation of state or federal law applicable to a business covered by Chapter 22 is a violation of this chapter and may be enforced by the commissioner.

As you can see, there are various different ways a licensee's conduct and behavior can violate the law.

It is important to note that licensees should behave ethically and in accordance to the law in order to maintain their license in good standing.

If a licensee is involved in any of the mentioned prohibited actions, it means that the licensee is not behaving ethically and is breaking the law.

By doing so, the licensee is subject to disciplinary action, which we will discuss later in this lesson.

### **Fees and Charges**

When working as a mortgage lender or mortgage loan originator, you will have clients that will be making one of the biggest financial decisions and commitments of their lives.

Though this commitment is one of the biggest, the majority of consumers know very little about the transaction itself. Part of the large commitment includes different fees and charges that lenders add to the transaction costs aside from the cost of the property. Consumers are not necessarily knowledgeable about these specific costs.

Due to the lack of knowledge on behalf of the consumer, state law has created provisions regarding disclosures about these fees and charges in the hopes of protecting the consumer. We will review these provisions now.

Section 75 of Chapter 58, Title 40, also known as the Licensing and Mortgage Brokers Act, deals with mortgage broker fees and agreement disclosing charges.

The law states that within three business days of receiving an application for a mortgage loan, the broker must provide a mortgage broker fee agreement. The mortgage broker fee agreement discloses the estimated charges to the borrower for the mortgage loan and itemizes the charges provided if required under, federal or state law. This particular disclosure is considered delivered when deposited with the United States Postal Service for first class delivery. [§40-58-75(A)]

The law also makes it clear that a person may not earn, charge, or collect a mortgage broker or processing fee unless the person meets the requirements of Chapter 40, is authorized to conduct mortgage brokerage services by this chapter, or is exempt from the requirements of this chapter. [§40-58-75(B)]

Whatever fees might be charged must be made known to the borrower ahead of time. In other words, all fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker as is required by federal or state law. [§40-58-75(C)]

As mentioned above, the mandatory mortgage broker fee agreement must be in writing and given to the borrower within 3 days of the borrower's application.

The mortgage broker fee agreement must include the following information:

- Current name
- Address
- Telephone number of the mortgage broker's branch office
- Account number, if any
- Date of agreement
- Name of the borrower or proposed borrower
- Signature of borrower and mortgage broker
- Amount of any fees
- Nature of services provided to the borrower

A copy of the completed mortgage broker fee agreement must be given to the borrower and this disclosure must be signed by the borrower acknowledging that he or she received the document. If the loan could be co-brokered, the agreement must have a statement saying so. If that is the case, the mortgage broker must provide written notice of co-brokering within three days of making the final decision to co-broker. The notice must include the name and street and mailing address of the co-broker as well as which broker should be contacted regarding the progress of the services provided. Each co-broker must be licensed with the administrator. [§40-58-75 (D)]

There are also other fee and charges disclosures that are mandated and regulated by state law aside from the mortgage broker fee agreement.

Section 102 of Chapter 10, Title 37 deals with fees and other charges on mortgage loans for personal, family or household purposes. This section of the law states that whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for personal, family or household purpose:

- The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction.
  - The creditor may require the attorney or agent to provide mortgage title insurance
  - Any legal fees other than for examination and certification of the title, the preparation of all required documents, and the closing of the transaction required or incurred by the creditor in connection with the transaction is the responsibility of the creditor, regardless of who pays for the title work, document preparation, and closing
  - The creditor may contract and receive the following additional charges in a transaction:
    - The charge of any credit report
    - A nonrefundable assumption fee in an amount not exceeding the lesser of \$400.00 or 1% of the unpaid balance of the loan
    - Section 202 of Chapter 3 of Title 37 authorizes the following charges: [37-3-202(1)(a)(b)(c)(i)(ii)(d)(i)(ii)(iii)(iv)(v)(e)(f)(2)(a)(b)]
      - Loan finance charge
      - Official fees and taxes
      - Charges for insurance
      - Closing costs
        - Fees or premiums for title examinations, abstract of title, title insurance, surveys, or similar purposes
        - Fees for preparation of deed, settlement statement, or other documents
        - Escrows for future payments of taxes, insurance, water, sewer, land rents, assessments for improvements
        - Fees for notarizing deeds and other documents
        - Fees for appraising real estate that is collateral for the loan
        - Charges for other benefits conferred to the debtor
        - Fees and charges paid to persons registered as mortgage loan brokers pursuant to Chapter 58, Title 40
        - Insurance against loss or damage to property, or against liability
        - Insurance written in connection to the loan

The above provisions enable mortgage loan originators and mortgage lenders to collect the various different charges and fees relating to the closing of a mortgage loan transaction aside from the cost of the property. There are many moving parts in closing a mortgage loan. These provisions help protect the consumer from being charged additional fees that should not be included in the closing process. These provisions also help make the process simpler as all money relating to the closing can be collected at once and distributed by one person.

Charges and fees are not the only matters in a mortgage loan transaction that federal and state law includes in its provisions.

Providing proper disclosures regarding all fees and the mortgage loan itself during a mortgage loan transaction is also mandated by federal and state law. We will turn to these next.

## **Disclosures and Agreements**

Federal law requires mortgage loan originators provide many different disclosures to consumers. State law also specifies certain disclosures, some of which we have already discussed, that must be provided to consumers during a mortgage loan transaction.

Section 78 of Chapter 58, Title 40 denotes the requirements for certain disclosures.

The mortgage broker fee agreement, which as discussed earlier, must be provided to the borrower three days after their application is submitted, must contain the following statements: [§40-58-78(A)(1)(2)(3)(4)]

- The mortgage broker or loan originator is acting as the agent of the borrower in providing brokerage services to the borrower;
- When acting as agent of the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of the person;
- A detailed description of the services the mortgage broker or loan originator agrees to perform for the borrower, and a good faith estimate of any fees the mortgage broker or loan originator will receive for those services, whether paid by the borrower, the institutional lender, or both; and
- A clear and conspicuous statement of the conditions under which the borrower is obligated to pay for the services rendered under the agreement.

Additionally, at the time of application for a mortgage loan, the mortgage broker or originator or employee must provide the borrower with a document that specifies the agency designated to receive complaints or inquiries about the origination and making of the loan.

The document should include the telephone number and address of the agency. The consumer must sign a copy of the document acknowledging receipt of the disclosure and the copy must be maintained in the files of the mortgage broker or originator.

[§37-23-70] This particular disclosure protects the consumer by making him or her aware of the fact that they do have a way of reporting any wrongdoing during the transaction.

The law also demands that at the time the borrower receives the Loan Estimate and before the scheduled closing of the loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs provides a disclosure form that, as required by state law, includes the following: [§37-23-75(A)(1)(2)(3)(4)(B)]

- The dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount
- An itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;
- A dollar amount total of these two items and a percentage of the total specified in relation to the total amount of the loan; and
- For an adjustable rate mortgage, a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.
- The form must include a signature line for the borrower to acknowledge that they have received these disclosures and that they have been explained and he or she understands them and wants to enter into the loan transaction voluntarily.

Together with the disclosures mandated by federal law, the above are state specific disclosures that must be provided to the borrower when involved in a mortgage loan transaction. If any of these disclosures are not provided to the borrower, the licensee will be subject to disciplinary action.

## **Advertising**

Aside from licensee conduct during a mortgage loan transaction, state law also provides regulation on how a licensee should behave when conducting other activities. Licensees may want to advertise in order to obtain more business. Federal law has a lot to say about what is the correct way to advertise as a licensed mortgage loan originator. State law also has stipulations regarding advertisements.

First, advertising, for the sake of state law, is defined in the definitions portion of Chapter 22, Title 37. The law states that advertising is a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction. [§37-22-110(4)]

Without first obtaining a license, a person may not circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activities reserved for mortgage loan originators. [§37-22-120(A)(2)].

Thus, unless you are a licensee, you cannot advertise for anything relating to activities that require a license. If you were to advertise without a license, this behavior could be deemed fraudulent, and therefore illegal.

With the above in mind, it is no surprise that state law also states that a person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator. [§37-22-110(35)(b)]. Again, you have to be licensed in order to advertise mortgage loan origination activities and both underwriters and loan processors are not licensed as mortgage brokers or loan originators.

State law also expresses that if you are a licensee licensed through the Nationwide Mortgage Licensing System and Registry, the law requires you to use your unique identifier assigned by the Nationwide Mortgage Licensing System & Registry in all advertising and on all mortgage loan documents [§37-22-270 (D)]. Thus, whenever promoting yourself or your business as it relates to mortgage lending activities and whenever working with a client on a mortgage loan, you must include your unique identifier as proof of your licensure and as a mode of accountability.

For all other advertising provisions, Chapter 3, Title 22 specifies compliance with the Federal Truth in Lending Act [§37-3-301].

So far, we have discussed what state law mentions regarding proper conduct for licensees in the state of South Carolina.

We will now turn to what state law depicts is proper disciplinary action for licensees who violate the provisions in state law we have gone over.

## **Disciplinary Action**

### **Notifications, Hearings, and Appeals**

As we have reviewed before, the commissioner and administrator has a lot of authority when it comes to licensing in South Carolina. They also have a lot of discretion when it comes to imposing disciplinary action on those accused of violating state provisions.

However, the law does also specify ways in which a licensee accused of violating state provisions can defend himself or herself in a situation where the commissioner or administrator has requested an administrative order against the licensee. Of this, the laws say the following:

A person aggrieved by an administrative order issued by the commissioner may request a contested case hearing before the Administrative Law Court in accordance with the court's rules and procedures. According to state law, a contested case is defined as a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency or Administrative Law Court after an opportunity hearing [§1-23-505(3)].

The Administrative Law Court, which was established by Chapter 23, Title 1 of the South Carolina Code of Law, is an agency and a court of record within the executive branch of the government of South Carolina. It consists of 6 administrative law judges. [§1-23-500] If the person aggrieved by the administrative order issued fails to request a contested case hearing, within the time provided in the court's rules of procedure, the administrative order becomes final and the commissioner may ring action to enforce its order pursuant to Chapter 23, Title 1. [§37-22-130(A), §40-58-90(A)]

Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be saved upon the commissioner and all parties of record.

The final decision of the administrative law judge may be appealed as provided in Section 1-23-380, Section 1-23-610, or Chapter 23, Title 1. [§37-22-130(B), §40-58-90(B)]

Please note that all actions and hearings pursuant to Chapter 22. Title 37 are governed by Chapter 23, Title 1. [§37-22-200(E)] Chapter 23, Title 1 includes specific provisions on state agency rule making and the adjudication of contested cases in South Carolina.

The law provides with the above the tools necessary for a licensee to defend him or herself against action taken on him or her by the commissioner or administrator. Let's discuss some of the possible actions that can be taken against licensees.

### **Suspension, Revocation, and Rescission of Licenses**

As we discussed in the last section on applying for, obtaining, and maintaining a license, the commissioner or administrator has full discretion to determine whether an applicant or licensee should obtain a license or have his or her license suspended, denied, or revoked.

The commissioner, by order, may deny suspend, revoke, or refuse to issue or renew a license of a licensee or applicant or may restrict or limit the activities relating to mortgage loans of a licensee or person who owns an interest in or participated in the business of the licensee, if the commissioner finds that both the order is in the public interest; and: [§37-22-200(A)(1)(a-j)]

- The applicant or licensee has filed an application for license that contained a statement that is false or misleading with respect to a material fact;
- Has violated or failed to comply with a provision in Chapter 22 or order of the commissioner;
- Within the past 10 years been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related to business or an offense involving a breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court;
- Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practices involving financial services or financial services related business;
- Is subject of an order of the commissioner denying, suspending, or revoking that person's license;
- Is the subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
- Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements;
- Has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business that has been subject to an order or injunction;
- Has failed to pay the proper filing fee or renewal fee or fine, penalty or fee imposed by any government entity. (However, if this is the case, the commissioner may only enter a denial order and the commissioner will vacate the order once the deficiency has been corrected);
- Has falsely certified his or her attendance or completion of the hours of an approved education course.

The commissioner can also: [§37-22-200(B)(C)(D)(E)(F)(G)(H)(I)(J)(K)(L)]

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred



- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions of Chapter 22

It is important to note that when a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee with the consent and approval of the commissioner or administrator, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the administrator or commissioner. [§40-58-80(F)]

As you can see, there are various ways in which the commissioner or administrator can punish a licensee for his or her behavior. The above is disciplinary action that the commissioner or administrator can impose against a licensee for having violated the provisions included in the South Carolina Code of Law.

State law also includes other disciplinary action provisions that are more specific with regards to the type of licensee behavior. We will turn to these next.

### **Penalties/Fines**

What happens if a licensee does not disclose a charge or fee during a mortgage loan transaction? If a mortgage broker or loan originator violates the provisions regarding disclosures, charges and fees, the borrower can recover from the mortgage broker or loan originator charged with the violation: [§40-58-78(B)(1)(2)(3)]

- A penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction;
- Fees paid by the borrower to the mortgage broker or loan originator for services rendered by the agreement; and
- Actual costs, including attorney's fees, for enforcing the borrower's rights under the agreements.

However, if the mortgage broker or loan originator can show evidence that the violation he is accused of was not intentional and resulted from a bona fide error, he or she will not be held liable. [§40-58-78(C)]. In other words, if the mortgage loan originator can show with evidence that he or she unintentionally forgot to provide the borrower with a particular disclosure regarding fees or charges, he or she will not be charged with disciplinary action.

That said, if a loan originator is found to have intentionally disregarded the law, whether by ignoring a disclosure or any other provision included in the Mortgage Lending Act, he or she will be subject to disciplinary action. The law states that a person that is found to willfully violate the provisions in Chapter 22, Title 37 will be considered guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each violation. Each transaction involving unlawful making or servicing of a mortgage loan is a separate offence. [§37-22-230].

With regards to the enforceability of an agreement or transaction, Chapter 5, Title 37 explains that if a transaction or an agreement is found to have been made unconscionably at the time it was made, the court may refuse to enforce the agreement or transaction. [§37-5-108]

Additionally, if the court believes a person is engaging or is likely to engage in unconscionable conduct in collecting a debt arising from the transaction, the court can grant an injunction and a consumer can recover actual damages from the person violating the law. [§37-5-108]. Thus, if the person found violating the law is a licensee, then the court can find that the licensee owes the consumer actual damages.

Chapter 5 also refers to what the lender can do in the case of consumer default. The law states the following:

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable to the extent that: [§37-5-109, §37-5-110]

- The consumer fails to make a payment as required by agreement
- The prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

After a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer a notice. The notice is considered delivered when the creditor delivers it to the consumer or mails it to the consumer's residence. The notice must be in writing state the following:

- Name, address and telephone number of creditor whom payment is to be made
- Brief identification of the credit transaction
- Consumer's right to cure the default
- Amount of payment
- Date by which payment must be made to cure default

The chapter provides an example of what this notice should say:

“(name, address and telephone number of creditor), (account number, if any),  
(brief identification of credit transaction)

- (date is the LAST DAY FOR PAYMENT

- (amount) is the AMOUNT NOW DUE

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due us on the credit transaction in question. If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.”

After the notice of the consumer's right to cure is delivered, the creditor cannot proceed enforcing a security interest in goods that are collateral until 20 days after the delivery of the notice. It is important to note that cure restores the consumer to his rights under the agreement as though the defaults did not occur. [§37-5-111]

With regards to the location where an action is brought, chapter 5 denotes that if the action is brought to enforce an interest in land securing the consumer's obligation, the action can be brought in the county in which the land or a part thereof is located. If the current residency of the consumer is not in South Carolina, the action can be brought to the county where the loan or sale was made. [§37-5-113]

With regards to action brought by a creditor against a consumer, the complaint must allege the facts of the consumer's default, the amount the creditor is owed, and how that amount was determined, and whether the notice of cure has been delivered or is not required. A default judgment will only be entered into action if the default has been verified by the creditor or a sworn testimony, by affidavit or otherwise, showing that the creditor is entitled to the relief demand. [§37-5-114]

These provisions enable the creditor to take legal recourse for a fault on the part of the consumer. Let's go back to reviewing provisions that enable a consumer to take legal recourse against a licensee. We will now review what state law says of the civil and criminal liability of a licensee.

## **Civil and Criminal Liability**

### **Civil Penalties:**

For the purposes of the following provisions we will review, the term creditor means:

*A person who in the ordinary course of business regularly extends or arranges for the extension of credit or offers to arrange for the extension of credit. [§37-5-203(6)]*

A creditor who, in violation of the provisions of the Federal Truth in Lending Act or Section 37-2-309 or 37-3-308, fails to disclose information to a person entitled to information regarding a mortgage, is liable to that person in an amount equal to the sum of:

[§37-5-203(1)(a)(b)]

- Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this item must be not less than \$100.00 or more than \$1000.00; and
- In the case of a successful action to enforce the liability, the cost of the action together with reasonable attorney's fees as determined by the court.

With respect to disclosures mandated by the Federal Truth in Lending Act and state law regarding advertising, a creditor has no liability if within 60 days after discovering an error, and before the institution of an action or receipt of written notice of the error, the creditor notifies the person of the error and makes necessary adjustments in the appropriate account to assure that the person is not required to pay a finance charge in excess of the amount of percentage rate actually disclosed. [§37-5-203(2)]

As mentioned earlier, the law denotes that for any of the provisions violated, if the creditor can show with preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, he or she is not held liable. [§37-5-203(3)]

No action, as those described above can be brought more than 1 year after the occurrence of the violation. Additionally, the liability of the creditor with regards to the above provisions is meant to be in lieu of and not in addition to his or her liability under the Federal Truth in Lending Act. [§37-5-203(5)(8)].

### **Criminal Penalties:**

A lender who willfully makes charges in excess of those permitted by law is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$5,000.00, or to imprisonment not exceeding 1 year. [§37-5-301(1)]

A person, other than a supervised financial organization, who willfully engages in the business of making loans without a license where a license is required, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$5,000, or imprisonment not exceeding 1 year, or both. [§37-5-301(2)]

A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$500.00, or to imprisonment not exceeding one year, or both, if he willfully and knowingly: [§37-5-302(1)(2)(3)]

- Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of the Federal Truth in Lending Act,
- Uses any rate table or chart, the use of which is authorized by the provisions of the Federal Truth in lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions; or
- Otherwise fails to comply with any requirement of the provisions on disclosure of the Federal Truth and Lending Act

The criminal liability of a person is in lieu of and not in addition to his criminal liability under the Federal Truth in Lending Act; no prosecution of a person with respect to the same violation may be maintained pursuant to both South Carolina law and the Federal Truth in Lending Act.

### **Conclusion**

In this lesson we reviewed what state law specifically states is prohibited conduct and practice, proper conduct as well as what constitutes disciplinary action for those who obtain a license and violate state law provisions.

You should now have a better understanding of what is expected of a licensee, what licensees should not do, and what can happen if a licensee is accused or found guilty of violating state provisions.

## **LESSON SUMMARY**

### **Prohibited Conduct and Practice**

It is unlawful to:

- Misrepresent or conceal material facts
- Make false promises likely to influence, persuade, or induce an applicant for a loan
- Refuse improperly or fail to issue a satisfaction of a mortgage
- Fail to account for or deliver to a person entitled to receive funds, documents, or other things of value
- Pay, receive or collect in whole or in part any commission, fee, or other compensation for a mortgage loan origination in violation of state law
- Charge or collect a fee or rate of interest in violation of state law

- Advertise mortgage loans including rates, margins, discounts, points, fees, commissions, or other information that a person is not able to provide as advertised
- Fail to disburse funds in good faith and in accordance to a written agreement
- Engage in a transaction, practice, or course of business in connection to making a mortgage loan that is not in good faith or fair dealing, that is unconscionable, or constitutes fraud upon a person
- Fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:
  - Requested from the third party in writing by the mortgage lender or employee
  - Performed by a third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender
- Influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.
  - This provision does not prohibit asking the appraiser to consider additional appropriate property information; provide further detail, substantiation, or explaining for appraiser's value conclusion; or correcting errors on the appraisal report
- Fail to comply with mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by RESPA
- Fail to provide a payment history statement in a reasonable time and in a form easily understood by the borrower when he or she has written a request for one.
- Take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than \$5,000
- Fail to provide disclosures as required by state and federal law or collect any fee prior to providing required disclosures.
- Fail to comply with state or federal law
- Falsely advertise or misuse names
- Use a trade name or insignia of membership to an organization that the licensee is not a member of
- Charge fees for services rendered as a mortgage broker without disclosing fees as required by law

### **Fees and Charges**

Within 3 days of receiving an application, originator or broker must provide a mortgage broker fee agreement.

The mortgage broker fee agreement must disclose the estimated charges to the borrower for the mortgage loan and itemize the charges provided if required by law. The agreement must include:

- Current name
- Address
- Telephone number of broker's branch office
- Date of agreement
- Account number, if any
- Name of borrower or proposed borrower
- Signature of borrower
- Signature of mortgage broker
- Amount of any fees
- Nature of services provided to borrower

A copy of the mortgage broker agreement must be provided to the borrower.

If the loan is co-brokered, the mortgage broker agreement must say so.

The mortgage broker fee is considered as delivered once deposited with the US Postal Service for first class delivery.

All fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker.

Prior to a loan closing, the creditor must know the preference of the borrower for a legal counsel that is employed to represent him or her in all matters of the transaction relating to the closing of the transaction.

The creditor can require:

- Mortgage title insurance
- Legal fees other than for examination and certification of title, the preparation of documents, and the closing of the transaction are the responsibility of the creditor
- The creditor can receive other charges:
  - Charge for creditor report
  - Assumption fee
  - Loan finance charge
  - Official fees and taxes
  - Charges for insurance
  - Closing costs:
    - Title examination, abstract of title, title insurance, surveys, etc.
    - Preparation of deed, settlement statement, etc.
    - Escrows for future payments of taxes, insurance, water, sewer, land rents, etc.
    - Notarization of deeds and documents
    - Fees for appraisal
    - Fee for mortgage loan originator or broker
    - Insurance written in connection to loan

### **Disclosures and Agreements**

The law mandates that mortgage broker fee agreement be given to the borrower. The agreement must include the following statements:

- The mortgage broker or loan originator is acting as the agent of the borrower providing brokerage services to the borrower
- When acting as the borrower's agent, he or she owes him or her a duty of utmost care, honesty, and loyalty in the transaction
- A detailed description of services the mortgage broker or loan originator agrees to perform for the borrower and an estimate of fees
- A clear and conspicuous statement of the conditions under which the borrower must pay for the services rendered

The mortgage broker or loan originator must also provide to the borrower a document that specifies the agency designated to receive complaints or inquiries about the origination and making of the loan.

Between the time the borrower receives the Loan Estimate and before the scheduled closing, the mortgage loan officer must disclose in writing the amount earned on the loan. A disclosure that includes the following must be provided:

- The dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount
- An itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;
- A dollar amount total of these two items and a percentage of the total specified in relation to the total amount of the loan; and

- For an adjustable rate mortgage, a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.
- The form must also include a signature line for the borrower to acknowledge that they have received these disclosures and that they have been explained and he or she understands them and wants to enter into the loan transaction voluntarily.

### **Advertising**

Advertising is defined as a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction.

To advertise, one must have a license!

A person engaging solely in loan processing or underwriter activities cannot advertise or represent themselves to the public as someone that can perform any activities of a loan originator. Again, you must have a license to do so!

Those licensed through the Nationwide Mortgage Licensing System and Registry must use their unique identifier on all advertising and mortgage loan documents.

For all other advertising rules, licensees must comply with the federal Truth and Lending Act.

### **Notifications, Hearings, and Appeals**

A person aggrieved by an administrative order by issued by the commissioner or the administrator can request a contested case hearing before the Administrative Law Court. If the person does not request the contested case hearing, the administrative order becomes final.

The commissioner may deny, suspend, revoke, or refuse to issue or renew a license. The commissioner can also restrict or limit the activities of a licensee. He or she can do so because he or she finds that both the order is in the public interest and:

- The application contains false or misleading information
- Person violated or failed to comply with license law
- Within the past 10 years the person is convicted, pled guilty or nolo contendere to a felony or a misdemeanor involving financial services or some offence involving breach of trust or fraudulent or dishonest dealing, money laundering
- Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practices involving financial services
- Is subject of an order of the commissioner denying, suspending, or revoking their license
- Is subject of an order entered by the authority of a governmental entity with jurisdiction over financial services denying or revoking that person's license
- Does not meet qualifications and requirements for licensure
- Has been the executive officer or controlling shareholder or owned a controlling interest in a financial services business that has been subject to an order or injunction
- Has failed to pay the proper filing fee or renewal fee or fine, penalty or fee imposed by any government entity.

The commissioner may also:

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred

- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions in Chapter 22, Title 37

When a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, he or she can surrender his or her license and the rights and privileges that come with it.

### **Penalties/Fines**

If a mortgage broker or loan originator violates a provision regarding disclosures, fees or charges, the borrower can recover from the broker or originator:

- a penalty in the amount determined by the court
- fees paid by the borrower to the broker or originator
- actual costs

If mortgage broker or mortgage loan originator can show evidence that his or her violation of the law was not intentional, he or she will not be held liable.

If a transaction or agreement is found to have been made unconscionably at the time it was made, the court may refuse to enforce the agreement or transaction.

If the court believes that someone is engaging to is likely to engage in unconscionable conduct in collecting a debt, the court can grant an injunction and the consumer can recover actual damages.

### **Default:**

If a consumer is in default for more than ten days, a notice must be delivered to the consumer. The notice of the right to cure should include the following:

- Name, address and telephone number of creditor whom payment is to be made
- Brief identification of the credit transaction
- Consumer's right to cure the default
- Amount of payment
- Date by which payment must be made to cure default

A creditor must wait 20 days after delivery of the notice of right to cure before enforcing a security interest. Cure restores the consumer to his rights under the agreement as if no default occurred.

Action can be brought to enforce an interest in land securing an obligation in the county where the land is located.

### **Civil Penalties:**

A person who extends credit is considered a creditor.

A creditor in violation of the Federal Truth in Lending Act or Title 37, fails to disclosure information to a person that is entitled to receive information regarding a mortgage loan is liable to that person in an amount equal to the sum of:

- Twice the amount of the finance charge (not less than \$100, no more that \$1000)
- In the case of a successful action to enforce liability, the cost of the action together with the reasonable attorney's fees.

For disclosures mandated by the Truth in Lending Act, a creditor has no liability for 60 days after discovering an error and before the institution of an action or receipt of written notice of the error if he or she makes the proper adjustments to make sure that the person is not required to pay a finance charge in excess of what was already disclosed.

**Criminal Penalties:**

A lender who willfully makes charges in excess of those permitted by law is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$5,000, or to imprisonment of no more than 1 year.

A person who will fully engages in the business of making loans without a license is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$5,000, or imprisonment not exceeding 1 year, or both.

A person guilty of a misdemeanor upon conviction may be sentenced to pay a fine of up to \$500 or to imprisonment of up to 1 year if he willfully and knowingly

- Gives false information
- Uses any rate table or chart in a manner not consistent with the law
- Fails to comply with any requirements of law for proper disclosures.

The criminal liability of a person is in lieu of and not in addition to criminal liability under the Federal Truth in Lending Act.