HLS 14RS-1230 ENGROSSED

Regular Session, 2014

HOUSE BILL NO. 807

BY REPRESENTATIVE BARRAS

FINANCIAL INSTITUTIONS: Makes changes to residential mortgage brokers and lenders law

1 AN ACT 2 To amend and reenact R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(introductory 3 paragraph), 1088(D), (F), (G)(3)(introductory paragraph), and (J), 1088.2(A)(1) and 4 (3), 1088.3(A)(1) and (3), (C)(2)(introductory paragraph) and (b), and (D)(2), 5 1089(A), 1090(B)(1), 1092(B)(1)(e), (G), and (K), and 1099(F) and to enact R.S. 6 6:1083(11.1) and 1088(G)(3)(d), relative to mortgage servicers; to require that 7 mortgage servicers be licensed and regulated pursuant to the Louisiana Secure and 8 Fair Enforcement of Mortgage Licensing Act of 2009; and to provide for related 9 matters. 10 Be it enacted by the Legislature of Louisiana: 11 Section 1. R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(introductory 12 paragraph), 1088(D), (F), (G)(3)(introductory paragraph), and (J), 1088.2(A)(1) and (3), 13 1088.3(A)(1) and (3), (C)(2)(introductory paragraph) and (b), and (D)(2), 1089(A), 14 1090(B)(1), 1092(B)(1)(e), (G), and (K), and 1099(F) are hereby amended and reenacted and 15 R.S. 6:1083(11.1) and 1088(G)(3)(d) are hereby enacted to read as follows: 16 §1082. Purpose 17 The Legislature of Louisiana does hereby declare that it is in the best interest 18 of the citizens of the state to protect consumers in the most important financial 19 investment most will make, the purchase of a home, by requiring the licensing and 20 regulation of residential mortgage lenders, brokers, and originators, and servicers.

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	The purpose of this Chapter is to promote the safety and welfare of the people of the
2	state by providing for regulatory oversight and by establishing educational
3	requirements in a professional field in which unqualified individuals may injure or
4	mislead the public.
5	§1083. Definitions
6	As used in this Chapter:
7	* * *
8	(11.1) "Mortgage servicing" means collecting or remitting payment for
9	another, or the right to collect or remit payments for another, of any of the following:
10	principal, interest, tax, insurance, or other payment under a mortgage loan.
11	* * *
12	(18) "Residential loan transaction" means any agreement by a consumer with
13	a mortgage broker, mortgage loan originator, mortgage loan servicer, or mortgage
14	lender in connection with a residential mortgage loan.
15	* * *
16	(20) "Residential mortgage lending activity" means an activity, including
17	electronic activity, engaged in for compensation or with the expectation of
18	compensation in connection with a residential loan transaction, including the
19	origination or funding of a residential mortgage loan and the negotiation and
20	placement, or offering to negotiate, place, or fund a residential mortgage loan for
21	another person, or servicing a mortgage loan.
22	* * *
23	§1086. Licensure requirement
24	A. Except as otherwise provided in Subsection B of this Section, beginning
25	on July 31, 2009, and unless otherwise exempt pursuant to this Chapter, no person
26	shall engage in any residential mortgage lending activity in this state without first
27	obtaining and maintaining annually the following:

1	(1) A license and registration as a mortgage loan originator, or a license as
2	a mortgage lender or, mortgage broker, or mortgage servicer.
3	* * *
4	§1087. Exemptions; annual registration statement; fees
5	* * *
6	F. The following employers and their employees shall be exempt from the
7	provisions of this Part applicable to residential mortgage lenders, and residential
8	mortgage brokers, and mortgage servicers:
9	* * *
10	§1088. Application for licensure; surety bond
11	* * *
12	D. To comply with the requirements of this Section, an applicant for a
13	mortgage lender, or mortgage broker license, or mortgage servicer license shall
14	furnish the required information as to each owner and member if the applicant is a
15	partnership or limited liability company, each officer, director, and direct or indirect
16	owner of ten percent or more of applicant's outstanding shares if the applicant is a
17	corporation, and each settlor, trustee, and beneficiary if the applicant is a trust.
18	* * *
19	F. Notwithstanding any other law to the contrary, the commissioner may not
20	issue a mortgage lender license, or a mortgage broker license, or mortgage servicer
21	license unless the commissioner makes the minimum findings provided in
22	Paragraphs (E)(1), (2), (3), and (4) of this Section, and as to each owner, partner, and
23	member if the applicant is a partnership or a limited liability company, each officer,
24	director, and direct or indirect owner of ten percent or more of the outstanding shares
25	if the applicant is a corporation, and each settlor, trustee, and beneficiary if the
26	applicant is a trust.
27	G.
28	* * *

(3) The required amount of the surety bond shall be determined by information in a report submitted by an applicant or licensee as prescribed by the commissioner. The total dollar amount of the original outstanding principal balance of all residential mortgage loans <u>serviced or</u> originated by the applicant secured by immovable property located in this state, including all such loans originated by mortgage loan originators employed by the applicant during the previous calendar year and reported pursuant to this Subsection shall be used to determine the amount of the bond. The required amount of the bond shall be determined by information in a report of total loan volume submitted by the applicant as prescribed by the commissioner. Total loan volume of the applicant shall be calculated by adding all of the following:

* * *

(d) The total outstanding principal balance as of the end of the previous calendar year for all residential mortgage loans serviced.

15 * * *

J. An applicant for a mortgage originator license who is employed by, or is an exclusive agent for, a juridical person engaging in residential mortgage lending activities as a licensed mortgage broker, or mortgage lender, or mortgage servicer may satisfy the requirement of furnishing a surety bond by submitting evidence in a form and manner satisfactory to the commissioner that his employer or principal has obtained a surety bond which satisfies the requirements of this Section. Notwithstanding any provision of law to the contrary, a mortgage originator whose license remains in a status of inactive or any other status which would not allow them to originate mortgage loans shall not be required to maintain the surety bond as required by this Section until such time as their license is returned to a status which allows them to originate mortgage loans.

* * *

1	§1088.2. Application for licensure; application and renewal fees
2	A. The application shall be accompanied by the following nonrefundable
3	fees as determined by and payable to the commissioner:
4	(1) In the case of an application for a license to act as a mortgage lender, a
5	mortgage broker, mortgage servicer, or both combination of any, a license fee in an
6	amount not to exceed four hundred dollars.
7	* * *
8	(3) An annual license renewal fee for each person licensed as a mortgage
9	broker, or mortgage lender, or mortgage servicer in an amount not to exceed three
10	hundred dollars.
11	* * *
12	§1088.3. Application for renewal of license; restriction; late renewal fees
13	A.(1) Each person licensed as a mortgage broker, or mortgage lender, or
14	mortgage servicer shall submit an annual license renewal application on or before
15	December thirty-first of each year in a manner and form prescribed by the
16	commissioner.
17	* * *
18	(3) An annual renewal application shall be accompanied by the required
19	annual license renewal fee pursuant to R.S. 6:1088.1. An annual license renewal
20	application submitted after December thirty-first and before March first of the
21	following year shall be charged an annual license renewal late fee of two hundred
22	dollars for residential mortgage lenders, and brokers, and servicers, and fifty dollars
23	for mortgage loan originators, in addition to the annual license renewal fee.
24	* * *
25	C.
26	* * *
27	(2) The commissioner shall not renew a residential mortgage broker, or
28	lender, or servicer license for which an application for license renewal is submitted
29	for the year 2010, and shall not renew any residential mortgage lender or broker

2	thereafter, unless the commissioner finds at a minimum:
3	* * *
4	(b) The applicant for renewal of a residential mortgage lender, or broker, or
5	servicer license is in compliance with all final or uncontested orders of, and consent
6	agreements with the commissioner, including but not limited to, the payment of all
7	fees, penalties, or refunds.
8	D.
9	* * *
10	(2) The license of a mortgage loan broker, or lender, or servicer failing to
11	satisfy the minimum standards for annual license renewal in Paragraph (C)(2) of this
12	Section shall expire on December thirty-first.
13	* * *
14	§1089. Name or location changes and closures; fees
15	A.(1) No residential mortgage lender, or originator, or servicer shall conduct
16	the residential mortgage lending activities provided for in this Chapter under any
17	name other than the one stated in its current record of information in the licensing
18	system.
19	(2) A residential mortgage lender <u>or servicer</u> shall notify the commissioner
20	of a change in the location or name of the business or the addition of offices by
21	submitting such information to the licensing system prior to the change. A notice of
22	change of location or name or addition of offices shall be accompanied by a filing
23	fee of one hundred dollars.
24	(3) A residential mortgage lender <u>or servicer</u> shall notify the commissioner
25	of the closing of any office by submitting such information to the licensing system
26	and within thirty days of such closure.
27	* * *

license for which an application for license renewal is submitted for any year

1	§1090. Restrictions
2	* * *
3	B.(1) No person shall acquire or control a license to make, service, or broker
4	residential mortgage loans through the acquisition or control of fifty-one percent or
5	more of the ownership interest in a licensee without first having obtained written
6	approval from the commissioner, pursuant to an application for a change of control
7	in ownership of the licensee, filed in the manner and on a form prescribed by the
8	commissioner and accompanied by a fee of three hundred dollars. Any person who
9	acquires controlling interest in a licensee without first having filed an application for
10	change of control with the commissioner shall be deemed to be operating without
11	proper authority under this Chapter and is subject to the penalties of R.S. 6:1092(C).
12	* * *
13	§1092. Suspension and revocation of licensure; commissioner's interpretations;
14	prohibitions
15	* * *
16	B.(1) Notwithstanding any other law to the contrary, and in addition to any
17	other authority conferred upon the commissioner by any other provision of law, the
18	commissioner may upon discovery order an immediate suspension of the license of
19	any person licensed pursuant to this Chapter who:
20	* * *
21	(e) Has his license to act as a residential mortgage broker, residential
22	mortgage lender, mortgage servicer, or residential mortgage loan originator
23	suspended or revoked in this or another jurisdiction.
24	* * *
25	G. Any person who acts as a mortgage broker, mortgage lender, mortgage
26	servicer, or mortgage loan originator without complying with the licensing
27	provisions of this Chapter shall be subject to forfeiture of the compensation
28	attributable to and received by the mortgage broker, mortgage lender, mortgage

attributable to and received by the mortgage broker, mortgage lender, mortgage

servicer, or mortgage loan originator in connection with residential mortgage lending

27

1 activity occurring on or after August 15, 2001; provided that the forfeiture of such 2 compensation by the mortgage broker, mortgage lender, mortgage servicer, or 3 mortgage loan originator shall not impair the validity of the note and mortgage. 4 5 K. Any residential mortgage lender, or broker, or servicer whose license under this Chapter has been revoked for any reason may not reapply for a license 6 7 until at least five years have elapsed from the date of the order of revocation, unless 8 the commissioner, in his sole discretion, prescribes an earlier or later date. For 9 purposes of this Subsection, the order shall be considered to be the commissioner's 10 notification of revocation of the license. For the purposes of this Subsection, 11 mortgage lender, or mortgage broker, or mortgage servicer shall include the licensee, 12 owners of ten percent or more, and its members if the licensee is a limited liability 13 company, its partners if the licensee is a partnership, its officers and directors, if the 14 licensee is a corporation, and any other person determined by the commissioner, in 15 his sole discretion, to be closely related to the mortgage lender, or broker, or 16 servicer. 17 §1099. Criminal penalties 18 19 20 F. A lender, broker, or originator, or servicer who knowingly operates 21 without a license or while not exempt from the provisions of this Chapter shall be 22 guilty of a misdemeanor and upon conviction shall be subject to a fine not less than 23 five hundred dollars and not more than one thousand dollars, or to imprisonment not 24 exceeding one year, or both. 25 Section 2. This Act shall become effective January 1, 2015.

this Act shall have until June 30, 2015, to obtain the required license.

Section 3. Persons required to obtain a license solely as a result of the provisions of

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Barras HB No. 807

Abstract: Adds licensure requirement for persons engaged in residential mortgage servicing.

<u>Present law</u> provides for the purpose of the La. Secure and Fair Enforcement of Mortgage Licensing Act of 2009 (SAFE Act).

<u>Proposed law</u> retains <u>present law</u> and makes the purpose applicable to mortgage servicers.

<u>Proposed law</u> defines "mortgage servicing" as a means of collecting or remitting payment for another, or the right to collect or remit payments for another, relative to the principal, interest, tax, insurance, or other payment under a mortgage loan.

<u>Proposed law</u> amends the definition of "residential loan transaction" and "residential mortgage lending activity" and adds the definition of "mortgage servicing".

<u>Present law</u> provides licensure requirements under the SAFE Act. <u>Proposed law</u> subjects mortgage servicers to the same licensure requirements.

<u>Present law</u> provides exemptions to <u>proposed law</u>. <u>Proposed law</u> subjects mortgage servicers to the same exemptions.

<u>Present law</u> provides for the application, renewal, and surety bond requirements of <u>proposed law</u>. <u>Proposed law</u> subjects mortgage servicers to the requirements.

<u>Proposed law</u> requires persons engaged in residential mortgage servicing to the Louisiana SAFE Mortgage Licensing Act.

Persons required to obtain a license solely because of the provisions of <u>proposed law</u> shall have until June 30, 2015, to do so.

Effective January 1, 2015.

(Amends R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(intro. para.), 1088(D), (F), (G)(3)(intro. para.), and (J), 1088.2(A)(1) and (3), 1088.3(A)(1) and (3), (C)(2)(intro. para) and (b), and (D)(2), 1089(A), 1090(B)(1), 1092(B)(1)(e), (G), and (K), and 1099(F); Adds R.S. 6:1083(11.1) and 1088(G)(3)(d))

Summary of Amendments Adopted by House

Committee Amendments Proposed by <u>House Committee on Commerce</u> to the <u>original</u> bill.

1. Made technical changes.