

**Final Revised Synopsis of Alabama Consumer Credit Act Amendments  
and Draft Alabama Mortgage Law**

**Proposed Amendments to the Alabama Consumer Credit Act**

The Bureau of Loans recommended that amendments regarding the Alabama Consumer Credit Act or Mini Code be introduced in the upcoming legislative session. These amendments are reflected in the final draft submitted to the Legislative Reference Service.

The amendments would change existing exemptions regarding licensing under the Act and result in the licensure of more companies that are presently doing business in Alabama. Of particular concern for the Bureau of Loans is the fact that many creditors may operate in Alabama without licensure simply due to the fact they do not have a physical office or resident employee in Alabama. Additionally, many creditors utilize the current “HUD exemption” to avoid licensure. These exemptions would be eliminated by the amendments.

Another area addressed by the amendments relates to the fees under the Alabama Consumer Credit Act and the waiver of the license fee under the Small Loan Act. This relates in a “buy one get one free” approach to licensure that does not accurately reflect the costs associated with licensure. No other license area enjoys such a “free” license.

**Draft Alabama Mortgage Act:**

**Section 1:** Name of Act

**Section 2:** Purpose of Act:

Further protect consumers seeking residential mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices.

**Section 3:** Definitions

The definition section is an integral part of the legislation. And we are currently reviewing definitions in 3915 and other federal legislation to make our legislation as uniform as possible regarding definitions. As you know 3915 is subject to change and we are monitoring it closely to determine if we need to make additional changes. Key definitions in this section include: Loan Originator, Loan Processor, Mortgage Broker, Mortgage Lender, Mortgage Processor, and Mortgage Servicer.

#### **Section 4: Exemptions**

As you are aware this section is one of the most discussed with the associations. Banks want a complete exemption while non-depository institutions want a level playing field with no exemptions. We have provided an exemption from the entirety of the Act for banks only. While we exempt the banks from the Act, the exemption as to subsidiaries and affiliates of banks or bank holding companies only goes to licensing. We will require registration and these entities will be subject to the substantive issues found mostly in section 16. This section also lays out the hierarchy of obtaining a license meaning that licensed mortgage lenders do not have to obtain a mortgage broker, mortgage processor, or mortgage servicer license to perform those activities.

#### **Section 5: Effective dates**

This section currently establishes January 1, 2009 as the effective date for companies and individuals to obtain the proper licenses.

#### **Section 6: Licensing Process for Mortgage Lenders, Mortgage Brokers, Mortgage Servicers and Mortgage Processors.**

Key qualification factors for the original application include:

1. Name and address
2. Minimum 2 years experience from the principal officer of the company.
3. Articles of incorporation and authorization from the Secretary of State.
4. Fingerprint cards for the owners, loan originators and loan processors.
5. Requires bond to be issued in favor of the State of Alabama as required in Section 9.
6. Resume' and list of lenders with whom the applicant has conducted business.
7. The cost of the original license is laid out in Section 11.

This section also provides the requirement to obtain a license for each location (branch) where the licensee has direct contact with Alabama consumers regarding originating, processing, funding, or servicing Alabama mortgage loans. The cost of a branch license is \$500.00.

#### **Section 7: Licensing process for Loan Originators and Loan Processors.**

Key qualifications to obtain a loan originator and loan processor license include:

1. Name and address
2. Proof of at least one year experience or proof of completion of a 24 hour education course provided by various associations.
3. Provides for an original license fee of \$100 and renewal fee of \$50.
4. Must file fingerprint cards.
5. Licenses expire on December 31 of each year.
6. Renewal must be filed with certificates of 6 hours of education.

**Section 8: Bond requirements**

This section lays out the bond requirements for mortgage lenders, mortgage brokers, mortgage servicers and mortgage processors. Bond requirements are \$50,000 for mortgage brokers, \$150,000 for mortgage lenders, \$75,000 for mortgage servicers, and \$25,000 for mortgage processors.

**Section 9: Investigation of application and license restrictions**

The Department will conduct an investigation of the application to determine whether a license should be granted. The Department will not issue a license if the applicant or any owner or officer has been convicted of a felony or crime of fraud, theft, forgery, bribery, embezzlement, or making a false statement. This section gives the Department 90 days to review a completed application.

**Section 10: License fees and renewal process for mortgage lenders, mortgage brokers, mortgage servicers, and mortgage processors.**

The license fees will be \$600 for the original application for each license type and \$500 for the renewal. Each license type will expire on December 31<sup>st</sup> of each year. Renewal applications are due on December 1<sup>st</sup> of each year. This section also allows for a penalty of \$25 per day for operating after the expiration date with an expired license. The renewal application must be filed with proof of completion of 12 hours of approved education by the principal officer.

**Section 11: Characteristics of the license**

The license will state the company name and address. Loan originator and loan processor licenses will state the individual's name, the company they are working for, and the address they are working at. The licenses cannot be transferred or assigned. They may be amended to show a new address or if a loan originator changes companies. The amendment fee will be \$25.00.

**Section 12: Change of ownership**

This section requires licensees to provide notice of any change of ownership of more than 10% within 30 days of the change.

**Section 13: Record maintenance and examination**

This requires licensees to maintain records required by the Department for a period of three years. The Department may examine the records without notice any time the Department deems necessary but at least once every 24 months. The cost of the examination will be in accordance with 5-2A-24. We can disclose violations of the Chapter after a final order and may share examination findings with regulatory or enforcement agencies as deemed necessary by the Supervisor.

#### **Section 14:** Annual Report and other notification requirements

The annual report shall be filed on May 1<sup>st</sup> of each year covering the previous calendar year. The report will contain information that is required by the Department. Failure to file the annual report by May 1<sup>st</sup> will result in a penalty of \$25 per day after May 1<sup>st</sup> but not to exceed \$500. If the company does not pay the penalty then the Department will revoke the license.

Licensees shall notify the Department of any filing of bankruptcy, any institution of revocation by any state or government agency, any felony indictment, any felony conviction, and any misdemeanor conviction in which fraud is an essential element within 15 days of the occurrence of the above mentioned actions. This applies to companies and individual loan originator and loan processor licenses. Companies must also notify the department within 60 days of a filing of civil action against the company.

#### **Section 15:** Display of signage and license.

This section does not allow companies to operate at residence addresses. This section also requires licensees to display their license conspicuously at their place of business.

#### **Section 16:** Licensee restrictions

Licensee shall not:

- Misrepresent a material fact or make false promises intended to influence an applicant for a mortgage loan
- Misrepresent or conceal from an applicant or mortgage company any material fact, term, or condition
- Fail to disburse funds in accordance with a written commitment
- Improperly refuse to issue a satisfaction of a mortgage in accordance with applicable state law.
- Fail to account for any funds, deposits, checks, drafts, mortgages or other documents that have come into the possession of the licensee.
- Engage in any transaction or practice that is not in good faith or operates as a fraud upon any person
- Engage in any fraudulent residential mortgage underwriting practices
- Induce a borrower to sign any document with any blank spaces to be filled after it has been signed.
- Make a mortgage loan with the intent to foreclose.
- Charge more than 5% total points for all mortgage lenders, mortgage brokers, mortgage processor, and mortgage servicer fees combined.
- Pay any person for originating mortgage loans unless that person is a licensed originator or loan processor.
- Refuse to provide a loan payoff within 3 business days.

- Knowingly withhold, extract, remove, mutilate, destroy, or conceal any records.
- Fail to post a payment within 2 business days after receiving the payment.
- Finance single premium credit insurance

This section also states that no licensed mortgage lender shall transact business with any mortgage broker unless that mortgage broker is licensed or exempt from licensing and mortgage brokers can only submit loan packages to licensed lenders or lenders exempt from licensing. It also restricts the use of the word bank and requires licensees to be in compliance with all applicable laws, rules, and regulations of this state and the United States.

### **Section 17: Regulations**

This section allows the Department to promulgate regulations.

### **Section 18: Advertisements**

Advertisements cannot be false or misleading. Licensees must keep a copy of all advertisements that cite interest rates or payment amounts. It also requires advertisements that disclose interest rates to disclose other factors such as APR and term.

### **Section 19: Records to be maintained**

This section requires certain records to be maintained by the licensee. For instance, a mortgage origination agreement, initial application, HUD settlement statement, good faith estimate etc....

### **Section 20: Loan register**

This section requires licensees to maintain a loan register with certain information such as the name of the borrower, loan amount, date of application, and disposition of the application.

### **Section 21: Escrow account**

This requires licensees to set up an escrow account for receipt of payments of appraisal fees, credit report fees, insurance premiums, taxes, and loan commitment fees.

### **Section 22: Revocation, Suspension, or Denial**

This section lays out the procedures for revocation, suspension or denial. Due process will be given by the Department.

**Section 23:** Cease and Desist and penalties

The Department may issue a cease and desist order to any person required to be licensed under this chapter if the Department finds that such person is operating without proper authorization or operating unlawfully. The Department may assess a penalty of \$3000 to any person who violates a term of any order.

**Section 24:** Transition period after license revocation or suspension

This section allows for a transition period for companies servicing mortgage loans in case of license suspensions or revocations.

**Section 25:** Criminal penalties and other civil penalties.

This sections allows for criminal penalties for willful violations, making false entries, and failing to make a record of a mortgage transaction. This provision also allows for the Department to impose a civil penalty of \$500 per violation after a notice and a hearing.

**Section 26:** Liability restrictions

Licensees will have no liability for any act conducted in accordance with Department rules or regulations.

**Section 27:** Multi-State Licensing System

Allows the Department to participate in a multi-state licensing system.

**Section 28:** Mortgage Fraud

Mortgage fraud is defined in this section and this section also provides for a criminal penalty for committing mortgage fraud. Any person committing mortgage fraud will be guilty of a Class C felony. DA's and the Attorney General are given the authority to investigate mortgage fraud under this section.