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HOUSE OF REPRESENTATIVES
144th GENERAL ASSEMBLY

HOUSE BILL NO. 508

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO MORTGAGE LOAN ORIGINATORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1: Amend Title 5 of the Delaware Code by adding a new Chapter 24 to read as follows:

2 "CHAPTER 24. MORTGAGE LOAN ORIGINATORS

3 § 2401. Definitions.

4 In this chapter, unless the context otherwise requires:

5 (1) "Commissioner" means the State Bank Commissioner.

6 (2) "Education courses" means formal courses of learning, or instructional or training programs that relate to the
7 current business of mortgage loan originating, including the statutory and regulatory requirements and judicial
8 interpretations governing mortgage lending, banking and real estate transactions and practices in this State. Education
9 courses required by this article may be offered by: (i) national, Delaware or other state associations that are controlled by
10 and whose membership comprises, but is not necessarily restricted to, mortgage brokers or banking institutions; provided,
11 however, that any such association shall maintain supervision of such education courses satisfactory to the Commissioner;
12 (ii) degree and non-degree granting institutions of post-secondary education, approved by the Commissioner; or (iii) any
13 other entities as may be approved by the Commissioner. Such approval shall remain in effect so long as the education
14 courses offered by approved entities evidence standards that are consistent with the purposes of this chapter, as determined
15 by the Commissioner.

16 (3) "Exempt organization" means any insurance company, banking organization, bank holding company, federal
17 credit union, national bank, state bank, federal savings bank, or any bank, trust company, savings bank, savings and loan
18 association or credit union or any affiliate or subsidiary of the preceding entities organized under the laws of any state, or
19 any instrumentality created by the United States or any state with the power to make mortgage loans.

20 (4) "Mortgage loan" shall have the same meaning as such terms are defined pursuant to § 2101(4) of this title.

21 (5) "Mortgage loan originating" means providing services to a customer of an originating entity by soliciting,
22 negotiating, explaining or finalizing the terms of a mortgage loan; provided, however, that the term "soliciting" shall mean

23 the discussion of a mortgage loan product or products with a customer or potential customer but shall not be deemed to
24 mean the taking of customer information or the referral of a customer or the customer's information to a person who
25 engages in mortgage loan originating; provided further that a MLO, as defined below shall not be deemed to include any
26 person who provides clerical or secretarial services or provides legally related services that are not provided directly by an
27 attorney relating to mortgage loan originating activities of an originating entity.

28 (6) "Mortgage loan originator" and "MLO" mean any person employed by or affiliated with an originating entity,
29 who engages in mortgage loan originating irrespective of how such person is compensated by such originating entity, or
30 any natural person who as an originating entity, or any substantial equity owner of an originating entity, engages in
31 mortgage loan originating with respect to residential property; provided that "affiliated with an originating entity" shall
32 mean any person who is an independent contractor and is compensated by such originating entity in whole or in part, either
33 directly or indirectly. A MLO shall not mean any natural person who is an originating entity, or any substantial equity
34 owner of an originating entity, or any officer or manager of an originating entity that supervises the activities of MLOs and
35 does not communicate directly with the customers of the originating entity.

36 (7) "Originating entity" means a person or entity licensed pursuant to chapters 21 or 22 of this title.

37 (8) "Person" means an individual.

38 § 2402. Licensing and application.

39 (a) No person shall engage in mortgage loan originating without first being licensed by the Commissioner as a
40 MLO pursuant to this chapter, unless otherwise exempt pursuant to § 2405 of this chapter or regulations of the
41 Commissioner. Every person licensed under this chapter shall be a financial institution for the purposes of Part I of this
42 title.

43 (b) Upon the filing of a license application, if the Commissioner shall find the general character and fitness and
44 the education qualifications of the applicant are such as to warrant belief that the applicant will engage in mortgage loan
45 originating honestly, fairly, and efficiently within the purpose of this chapter, the Commissioner shall thereupon issue a
46 license to the applicant as a MLO.

47 (c) As part of such application, the applicant shall pay to the Commissioner as an investigation fee the sum of
48 \$250 which shall not be refundable. Upon approval, the applicant shall pay a license fee of \$250, which shall be payable
49 annually thereafter, and such amount shall be allocated to and for the assistance of the Delaware Emergency Mortgage
50 Assistance Program. No abatement in the amount of said license fee shall be made if the license is issued for less than one
51 (1) year or if the license is surrendered, suspended, canceled or revoked prior to the expiration of the period for which such
52 license was issued. Every license issued hereunder shall expire on December 31 of each year.

53 (d) Upon licensing the applicant as a MLO, the Commissioner shall issue a certificate attesting to such licensing.
54 The Commissioner shall transmit one copy of such certificate to the applicant, file another copy in his or her office, and
55 transmit notice of approval of such application, in such form as the Commissioner deems appropriate, to the originating
56 entity for which the applicant is providing services pursuant to subsection (h) of this section at the time of making such
57 application. In the event of the expiration of a license, the Commissioner shall notify the originating entity of that
58 expiration.

59 (e)(1) The Commissioner may refuse to issue a license pursuant to this chapter upon finding that the applicant (i)
60 has been convicted of a felony, (ii) has had a license revoked by the Commissioner or a regulatory person or entity of
61 another state that regulates persons engaging in mortgage loan originating, (iii) has been a director, partner, or substantial
62 equity owner of an originating entity which has had a registration or license revoked by the Commissioner or a regulatory
63 person or entity of another state that regulates such originating entities, or (iv) has been an employee, officer or agent of, or
64 a consultant to, an originating entities which has had a registration or license revoked by the Commissioner or a regulatory
65 person or entity of another state that regulates such originating entity where such person shall have been found by the
66 Commissioner or by such similar regulatory person or entities of another state to bear responsibility in connection with
67 such revocation.

68 (2) For purposes of subsection(e)(1) above, a person shall be deemed to have been convicted of a felony if such
69 person shall have pled guilty or nolo contendere to a charge thereof before a court or magistrate, or shall have been found
70 guilty thereof by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the
71 pronouncement of sentence or the suspension thereof; provided, however, that such conviction of a crime shall not require
72 the Commissioner to refuse to license such applicant if such plea, decision, judgment or verdict shall have been set aside,
73 reversed or otherwise abrogated by lawful judicial process or if the person convicted of the crime shall have received a
74 pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction
75 where the conviction occurred, or shall have received a certificate of good conduct granted by a board of parole pursuant to
76 the provisions of the executive law to remove the disability under this chapter because of such conviction.

77 (3) If the Commissioner refuses to license an applicant or renew a license pursuant to this subsection, the
78 Commissioner shall notify the applicant or licensed MLO of such refusal, in writing; provided, however, the
79 Commissioner shall retain any fee charged for the expense of processing an initial application, notwithstanding that such
80 application was rejected. Upon refusal to issue or renew a license, the Commissioner shall notify the originating entity of
81 such refusal in writing. If the applicant requests a hearing, the Commissioner shall hold such hearing under Chapter 101 of
82 Title 29.

83 (f) An application for a license required under this chapter shall (i) be submitted by such method and in such form
84 as the Commissioner may prescribe; (ii) under oath; and (iii) shall contain the following information:

85 (1) The exact, legal name and residence address of the applicant and the date of birth of the applicant;

86 (2) The current business name and address of the originating entity employing the applicant or with
87 which the applicant has an affiliation; and

88 (3) Such other pertinent information as the Commissioner may require.

89 (g) Notwithstanding any law to the contrary, the Commissioner may require that any application for, or renewal
90 of, a license or for any other submission or approval as may be required by this chapter be made or executed by electronic
91 means if the Commissioner deems it necessary to ensure the efficient and effective administration of this chapter.

92 (h) Notwithstanding subsection (a) of this section, a person, upon initial employment by or affiliation with an
93 originating entity, may immediately engage in mortgage loan originating on a temporary basis until such time as such
94 person is licensed as a MLO or notified by the Commissioner that his or her application has been denied. No originating
95 entity shall permit any such person to engage in mortgage loan originating without having proof of notice from the
96 Commissioner that it has received an application for licensing of such person as a MLO.

97 (i) The fees and assessments established pursuant to chapter may be collected by, and also include a processing
98 fee charged by, an entity with which the Commissioner has entered into a written contract or a memorandum of
99 understanding to process applications and the annual licensing of MLOs pursuant to this chapter, and any such processing
100 fees shall not be remitted to the Commissioner and shall not be deemed revenue pursuant to this section or any other law of
101 this State.

102 § 2403. Renewal of license.

103 Every MLO desiring to continue in mortgage loan originating shall, at least 30 days prior to the expiration of
104 his or her license or renewal thereof, make application to the Commissioner, on forms to be provided by the
105 Commissioner, for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as
106 new applications if said renewal applications are not on file with the office of the Commissioner at least thirty (30)
107 days prior to the expiration of such license or renewal thereof. MLOs who have not complied with supervisory letters
108 or who have not paid any money when due may be refused license renewal.

109 § 2404. Education requirements.

110 Each MLO shall, as a condition of initial and subsequent annual licensing, satisfactorily complete education
111 requirements as prescribed pursuant to this section and shall submit acceptable proof of the same as the Commissioner
112 determines appropriate.

113 (1) Within the last five (5) years prior to approval or within one (1) year after approval of an application for
114 licensing as a MLO, such person shall have completed eighteen (18) hours of education courses.

115 (2) Notwithstanding paragraph (1) of this section or subsection (a) of § 2402 of this chapter, any person employed
116 by or affiliated with an originating entity prior to the effective date of this chapter, who engages in mortgage loan
117 originating on or after such date, shall comply with the licensing and education requirements prescribed by this chapter on
118 or before two years after that effective date.

119 (3) After two years following initial licensing, each MLO, as a condition of maintaining a license as a MLO, shall
120 complete a minimum of eighteen hours of education courses every two years during the next succeeding eight years.
121 Thereafter, each MLO shall complete eight hours of education courses every four years; provided, however, that any MLO
122 who is covered by subsection (2) of this section and has completed eighteen hours of education courses every two years for
123 at least six years and shall at such time have acquired ten or more years of experience engaged in mortgage loan originating
124 shall thereafter complete eight hours of education courses every four years.

125 (4) Each biennial or quadrennial education requirement shall include, but not necessarily be limited to, education
126 courses in statutory and regulatory requirements and judicial interpretations governing mortgage lending and real estate
127 transactions and practices; provided, however, that three hours of such requirement consist of instruction in ethical conduct
128 in the area of mortgage loan originating or lending practices.

129 (5) All applicable education requirements shall be completed by the expiration date of a MLO's licensing during
130 the year in which completion of the education requirements are due. Notwithstanding § 2407 of this chapter, failure to
131 timely complete such education requirements shall cause the license of such MLO immediately to be suspended
132 irrespective of whether the licensed MLO has made satisfactory payment of the annual license fee. Such license shall
133 expire within thirty (30) days after the date such suspension commences if the applicable education requirements are not
134 completed by the suspended MLO within such period of time. No originating entity shall permit any MLO that is subject to
135 any education requirement pursuant to this chapter to engage in mortgage loan originating until acceptable proof or record
136 of completion has been obtained by such originating entity. Failure of any originating entity to comply with the provisions
137 of this section shall be deemed a violation of chapters 21 or 22 of this title, whichever is applicable to that entity.
138 § 2405. Exemptions.

139 (a) The provisions of this chapter shall not apply to an individual employed by an exempt organization or a
140 subsidiary or affiliate of an exempt organization, provided, however, that any such affiliate or subsidiary licensed by the
141 Commissioner pursuant to chapters 21 or 22 of this title shall provide an educational program or courses for its employees
142 who engage in mortgage loan originating as defined by this chapter on behalf of such subsidiary or affiliate, and provided

143 further that such educational program or courses shall be the substantial equivalent, as determined by the Commissioner, of
144 the educational requirements applicable to mortgage loan originators as required by this chapter.

145 (b) The provisions of this chapter shall not apply to an individual who is under an exclusive contract with an
146 exempt organization or a subsidiary or affiliate of an exempt organization to the extent that the individual is acting within
147 the scope of the individual's employment or exclusive contract and is acting within the scope of the charter, license,
148 authority, approval or certificate of the exempt organization or an affiliate or subsidiary of the exempt organization;
149 provided, however, any such affiliate or subsidiary of such exempt organization licensed by the Commissioner pursuant to
150 21 or 22 of this title, shall provide an educational program or courses for individuals under exclusive contract with such
151 affiliate or subsidiary who engage in mortgage loan originating as defined by this chapter on behalf of such affiliate or
152 subsidiary, and provided further that such educational program or courses shall be the substantial equivalent, as determined
153 by the Commissioner, of the educational requirements applicable to mortgage loan originators as required by this chapter.

154 (c) The provisions of this chapter shall not be deemed to require an attorney at law in good standing in this state,
155 who engages in mortgage loan originating, to meet the licensing or education requirements prescribed pursuant to this
156 chapter.

157 (d) No employee of, or a person affiliated with, an originating entity shall be subject to the licensing or education
158 requirements of this chapter due solely to such employee or person assisting in the performance of the business activities of
159 such originating entity that are incidental to the performance of any mortgage loan originating activities performed by such
160 originating entity.

161 (e) No employee of, or a person affiliated with, an exempt organization shall be subject to the licensing or
162 education requirements of this chapter due to such employee or person assisting in the performance of any business
163 activities of a mortgage broker or lender licensed under chapters 21 or 22 of this title respectively that is controlled by, or is
164 a subsidiary of, such exempt organization.

165 (f) Variances to, or extensions of, the education requirements prescribed pursuant to this chapter may be granted
166 by the Commissioner (i) for reasons of health certified by an appropriate health care professional; (ii) for extended active
167 duty with the armed forces of the United States; or (iii) for other good cause deemed acceptable by the Commissioner, in
168 his or her sole discretion, which may prevent satisfactory or timely completion of such requirements.

169 (g) Such other persons as may be exempt pursuant to regulations of the Commissioner.

170 § 2406. Required records.

171 (a) Each originating entity shall obtain and retain acceptable documentation of the satisfactory completion of
172 education courses required pursuant to this chapter by each MLO employed by or affiliated with such originating entity

173 and shall provide such documentation at the request of the Commissioner. Such documentation shall be retained by an
174 originating entity for six years. An originating entity shall retain a copy of any original proof or record of completion
175 provided by a MLO. In those instances when an originating entity also retains the original proof or record of such
176 completion of any then-applicable education requirement, such originating entity shall provide the original proof or record,
177 upon request, when a MLO terminates or has terminated employment or affiliation with the originating entity.

178 (b) Every MLO shall maintain such books, accounts and records as will enable the Commissioner to enforce
179 full compliance with this chapter, which books, accounts and records shall be in such form, shall contain such
180 information and shall be kept in such manner as the Commissioner may require. Such records shall be kept at such
181 place and shall be preserved for such length of time as the Commissioner may specify.

182 (c) A MLO shall file with the Commissioner such reports at such times as the Commissioner may require,
183 which reports shall be in such form and shall contain such information as the Commissioner may specify.

184 (d) The Commissioner shall maintain a list of the MLOs licensed and in good standing. Such list shall indicate
185 the name, license number and current originating entity, if any, employing each MLO or with whom such MLO is
186 affiliated. Each originating entity shall on a quarterly basis in each calendar year advise the Commissioner, in writing, of
187 any MLOs employed by or affiliated with such originating entity and shall also advise in such report of any dismissal for
188 cause of a MLO employed by or affiliated with such originating entity during such quarter, which is due or based upon an
189 alleged violation of this chapter.

190 §2407. Grounds for license suspension or revocation.

191 (a) The Commissioner may suspend or revoke any license to engage in the business of mortgage loan originating
192 pursuant to this chapter upon finding that:

193 (1) Through a course of conduct, the MLO has violated any provisions of this chapter or any rule or
194 regulation promulgated by the Commissioner under and within the authority of this title or of any other law, rule or
195 regulation of this State or the federal government pertaining to mortgage lending, brokering or loan originating;

196 (2) Any fact or condition exists which, if it had existed at the time of the original application for such
197 license, would have warranted the Commissioner to refuse to issue such initial license; or

198 (3) The MLO has committed a crime against the laws of this State or any other state or of the United
199 States involving moral turpitude or fraudulent or dishonest dealing, or a final judgment has been entered against the MLO
200 in a civil action upon grounds of fraud, misrepresentation or deceit;

201 (b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in
202 Chapter 101 of Title 29.

203 (c) Except as provided in subsection (b) of this section, no license shall be suspended or revoked except after
204 notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29. Any order of
205 suspension issued after notice and a hearing may include as a condition of reinstatement that restitution be made to
206 consumers of fees or other charges which have been improperly charged or collected as determined by the Commissioner.

207 (d) Any MLO may surrender a license by delivering to the Commissioner a written notice of license surrender, but
208 such surrender shall not affect the MLO's civil or criminal liability for acts committed prior to such surrender.

209 (e) An expiration of a license in accordance with this chapter shall not affect such MLO's civil or criminal liability
210 for acts committed prior to such expiration. If such expiration occurs after the issuance by the Commissioner of a
211 statement of charges and notice of hearing, the Commissioner may proceed against the MLO as if such expiration had not
212 taken place.

213 (f) No revocation, suspension, surrender or expiration of any license shall impair or affect the obligation of any
214 pre-existing lawful contract between any licensee and any person.

215 (g) Every license issued pursuant to this chapter shall remain in force and effect until the same shall have expired
216 in accordance with this chapter or shall have been surrendered, revoked or suspended in accordance with any other
217 provisions of this chapter, but the Commissioner shall have authority to reinstate a suspended license or to issue a new
218 license to a MLO whose license shall have been revoked if no fact or condition then exists which would have warranted
219 the Commissioner to refuse to issue such initial license under this chapter.

220 (h) Whenever a license shall have expired in accordance with this chapter, the Commissioner shall notify the
221 MLO and any affected licensee under this title that the license has expired and that the MLO may not engage in the
222 business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a
223 mortgage loan in this State.

224 §2408. Multi-State Automated Licensing System.

225 (a) The Commissioner is authorized to participate in any automated system involving one or more other states that
226 will facilitate any aspect of the application and licensing processes of this chapter.

227 (b) Upon joining any such system, the Commissioner may by regulation establish:

228 (1) Any additional requirements for a license under this chapter that the Commissioner determines are necessary
229 for participation in the system;

230 (2) Pre-licensing education and testing, and post-licensing continuing education of individuals employed by the
231 applicants or licensees subject to the system; and

232 (3) Any additional investigation fees, any fees paid directly to the administrator of the system, or any other fee
233 required by the system to process an application or maintain a license in such amount as the Commissioner determines is
234 necessary to participate in the system.

235 (c) The administrator of any such system in which the Commissioner participates is authorized to act on behalf of
236 the Commissioner to collect from the applicants and licensees subject to the system any payments due the Commissioner
237 under this chapter, to collect information and maintain records in electronic or other format relating to those applicants and
238 licensees, and to submit fingerprints and any other information required for a criminal history background check to the
239 Federal Bureau of Investigation or other law enforcement agency.

240 (d) Information maintained on any such system in which the Commissioner participates regarding the applicants
241 and licensees subject to the system may be shared with any other state participating in that system for the purpose of
242 licensing, regulating, or supervising that same applicant or licensee under a statute similar to this chapter, if that state could
243 have obtained that same information directly from the applicant or licensee under its own law. The Commissioner shall
244 ensure that the system maintains appropriate confidentiality, privacy, data security, and security breach notification policies
245 that are in full compliance with Delaware law.

246 § 2409. Construction.

247 Nothing contained in this chapter shall be deemed to impair, alter or render ineffective any provision of chapter 21
248 or 22 of this title including, but not limited to, any provision thereof relating to issuing, suspending or revoking any
249 mortgage broker or lending license.”

250 Section 2. This Act shall take effect on January 1, 2009; provided, however, that no person shall be required to obtain a
251 license pursuant to this Chapter until the Commissioner has adopted one or more regulations implementing the provisions
252 of this Chapter.

SYNOPSIS

This Act provides for the licensing and regulation of mortgage loan originators by the State Bank Commissioner.