

REFERENCE TITLE: mortgage brokers; mortgage bankers; licensing

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2079

Introduced by
Representative Harper

AN ACT

AMENDING SECTIONS 6-903 AND 6-943, ARIZONA REVISED STATUTES; RELATING TO
MORTGAGE BROKERS AND MORTGAGE BANKERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 6-903, Arizona Revised Statutes, is amended to
3 read:
4 6-903. Licensing of mortgage brokers required; qualifications;
5 application; bond; fees; renewal
6 A. A person shall not act as a mortgage broker if the person is not
7 licensed under this article. A person who brokers only commercial mortgage
8 loans shall obtain either a mortgage broker license or a commercial mortgage
9 broker license. A person who brokers residential mortgage loans shall obtain
10 a mortgage broker license.
11 B. The superintendent shall not grant a mortgage broker's license or a
12 commercial mortgage broker's license to a person, other than a natural
13 person, who is not registered to do business in this state on the date of
14 granting the license.
15 C. An applicant for an original mortgage broker's license shall:
16 1. Have not less than three years' experience as a mortgage broker,~~—~~
17 **OR LOAN ORIGINATOR** or equivalent lending experience in a related business
18 during the five years immediately preceding the time of application.
19 2. Have satisfactorily completed a course of study approved by the
20 superintendent during the three years immediately preceding the time of
21 application.
22 ~~3. Have passed a mortgage broker's test, pursuant to section 6-908,~~
23 ~~not more than one year before the granting of the license.~~
24 D. An applicant for an original commercial mortgage broker's license
25 shall:
26 1. Have not less than three years' experience in the commercial
27 mortgage broker business or equivalent lending experience in a related
28 business during the five years immediately preceding the time of application.
29 2. Have made in the past or intend to make or negotiate or offer to
30 make or negotiate commercial mortgage loans.
31 3. Provide the superintendent with the following:
32 (a) A balance sheet prepared within the immediately preceding six
33 months and certified by the licensee. The superintendent may require a more
34 recent balance sheet.
35 (b) If the applicant has begun operations, a statement of operations
36 and retained earnings and a statement of changes in financial position.
37 (c) Notes to the financial statement if applicable.
38 E. Notwithstanding subsection D, paragraph 3 of this section,
39 commercial mortgage broker licensees and commercial mortgage broker license
40 applicants whose own resources are derived exclusively from correspondent
41 contracts with institutional investors shall provide the superintendent with
42 a current financial statement or that of its parent company prepared
43 according to generally accepted accounting principles, including:

1 1. A balance sheet prepared within the immediately preceding six
2 months and certified by the licensee. The superintendent may require a more
3 recent balance sheet.

4 2. If the applicant has begun operations, a statement of operations
5 and retained earnings and a statement of changes in financial position.

6 3. Notes to the financial statement if applicable.

7 F. A person shall make an application for a license or for a renewal
8 of a license in writing on the forms, in the manner and accompanied by the
9 information prescribed by the superintendent. The superintendent may require
10 additional information on the experience, background, honesty, truthfulness,
11 integrity and competency of the applicant and any responsible individual
12 designated by the applicant. If the applicant is a person other than a
13 natural person, the superintendent may require information as to the honesty,
14 truthfulness, integrity and competency of any officer, director, shareholder
15 or other interested party of the association, corporation or group.

16 G. The nonrefundable application fee and annual renewal fee are as
17 prescribed in section 6-126. The nonrefundable application fee shall
18 accompany each application for an original license only. The superintendent
19 shall deposit, pursuant to sections 35-146 and 35-147, the monies in the
20 state general fund.

21 H. If a licensee is a person other than a natural person, the license
22 issued to it entitles all officers, directors, members, partners, trustees
23 and employees of the licensed corporation, partnership, association or trust
24 to engage in the mortgage business if one officer, director, member, partner,
25 employee or trustee of the person is designated in the license as the
26 individual responsible for the person under this article. If a licensee is a
27 natural person, the license entitles all employees of the licensee to engage
28 in the mortgage business. If the natural person is not a resident of this
29 state, an employee of the licensee shall be designated in the license as the
30 individual responsible for the licensee under the provisions of this article.
31 For the purposes of this subsection, an employee does not include an
32 independent contractor. A responsible individual shall be a resident of this
33 state, shall be in active management of the activities of the licensee
34 governed by this article and shall meet the qualifications set forth in
35 subsection C or D of this section for a licensee.

36 I. A licensee shall notify the superintendent that its responsible
37 individual will cease to be in active management of the activities of the
38 licensee within ten days of learning that fact. The licensee has ninety days
39 after the notification is received by the superintendent within which to
40 replace the responsible individual with a qualified replacement and to so
41 notify the superintendent. If the license is not placed under active
42 management of a qualified responsible individual and if notice is not given
43 to the superintendent within the ninety day period, the license of the
44 licensee expires.

1 J. Every person licensed as a mortgage broker or a commercial mortgage
2 broker shall deposit with the superintendent, before doing business as a
3 mortgage broker or a commercial mortgage broker, a bond executed by the
4 licensee as principal and a surety company authorized to do business in this
5 state as surety. The bond shall be conditioned on the faithful compliance of
6 the licensee, including the licensee's directors, officers, members,
7 partners, trustees and employees, with this article. The bond is payable to
8 any person injured by the wrongful act, default, fraud or misrepresentation
9 of the licensee or the licensee's employees and to this state for the benefit
10 of the person injured. Only one bond is required for any person, firm,
11 association or corporation irrespective of the number of officers, directors,
12 members, partners or trustees who are employed by or are members of such
13 firm, association or corporation. No suit may be commenced on the bond after
14 the expiration of one year following the commission of the act on which the
15 suit is based, except that claims for fraud or mistake are limited to the
16 limitation period provided in section 12-543, paragraph 3. If an injured
17 person commences an action for a judgment to collect from the bond, the
18 injured person shall notify the superintendent of the action in writing at
19 the time of the commencement of the action and shall provide copies of all
20 documents relating to the action to the superintendent on request.

21 K. The bond required by this section shall be ten thousand dollars for
22 licensees whose investors are limited solely to institutional investors, and
23 fifteen thousand dollars for licensees whose investors include any
24 noninstitutional investors.

25 L. For the purposes of subsection K of this section:

26 1. "Institutional investor" means a state or national bank, a state or
27 federal savings and loan association, a state or federal savings bank, a
28 state or federal credit union, a federal government agency or
29 instrumentality, a quasi-federal government agency, a financial enterprise, a
30 licensed real estate broker or salesman, a profit sharing or pension trust,
31 or an insurance company.

32 2. "Investor" means any person who directly or indirectly provides to
33 a mortgage broker funds that are, or are intended to be, used in the making
34 of a loan, and any person who purchases a loan, or any interest therein, from
35 a mortgage broker or in a transaction that has been directly or indirectly
36 arranged or negotiated by a mortgage broker.

37 M. Notwithstanding section 35-155, in lieu of the bond described in
38 this section, an applicant for a license or a licensee may deposit with the
39 superintendent a deposit in the form of cash or alternatives to cash in the
40 same amount as the bond required under subsection J of this section. The
41 superintendent may accept any of the following as an alternative to cash:

42 1. Certificates of deposits or investment certificates that are
43 payable or assigned to the state treasurer, issued by banks or savings banks
44 doing business in this state and fully insured by the federal deposit
45 insurance corporation or any successor institution.

1 2. Certificates of deposit, investment certificates or share accounts
2 that are payable or assigned to the state treasurer, issued by a savings and
3 loan association doing business in this state and fully insured by the
4 federal deposit insurance corporation or any successor institution.

5 3. Certificates of deposit, investment certificates or share accounts
6 that are payable or assigned to the state treasurer, issued by a credit union
7 doing business in this state and fully insured by the national credit union
8 administration or any successor institution.

9 N. The superintendent shall deposit the cash or alternatives to cash
10 received under this section with the state treasurer. The state treasurer
11 shall hold the cash or alternatives to cash in the name of this state to
12 guarantee the faithful performance of all legal obligations of the person
13 required to post bond pursuant to this section. The person is entitled to
14 receive any accrued interest earned from the alternatives to cash. The state
15 treasurer may impose a fee to reimburse the state treasurer for
16 administrative expenses. The fee shall not exceed ten dollars for each cash
17 or alternatives to cash deposit and shall be paid by the applicant or
18 licensee. The state treasurer may prescribe rules relating to the terms and
19 conditions of each type of security provided by this section.

20 O. In addition to such other terms and conditions as the
21 superintendent prescribes by rule or order, the principal amount of the
22 deposit shall be released only on written authorization of the superintendent
23 or on the order of a court of competent jurisdiction. The principal amount
24 of the deposit shall not be released before the expiration of three years
25 from the first to occur of any of the following:

- 26 1. The date of substitution of a bond for a cash alternative.
- 27 2. The surrender of the license.
- 28 3. The revocation of the license.
- 29 4. The expiration of the license.

30 P. A licensee or an employee of the licensee shall not advertise for
31 or solicit mortgage business in any manner without using the name and license
32 number as issued on the mortgage broker's principal place of business
33 license, except that a licensee may employ or refer to the commonly used name
34 and any trademarks or service marks of any affiliate. If a license is issued
35 in the name of a natural person, nothing in the advertising or solicitation
36 may imply the license is in the name of another person or entity. For the
37 purposes of this subsection, "advertise" does not include business cards,
38 radio and television advertising directed at national or regional markets and
39 promotional items except if those items contain rates or terms on which a
40 mortgage loan may be obtained.

41 Q. A licensee shall not employ any person unless the licensee:

- 42 1. Conducts a reasonable investigation of the background, honesty,
43 truthfulness, integrity and competency of the employee before hiring.
- 44 2. Keeps a record of the investigation for not less than two years
45 after termination.

1 R. A license is not transferable or assignable and control of a
2 licensee may not be acquired through a stock purchase or other device without
3 the prior written consent of the superintendent. Written consent shall not
4 be given if the superintendent finds that any of the grounds for denial,
5 revocation or suspension of a license as set forth in section 6-905 are
6 applicable to the acquiring person. For the purposes of this subsection,
7 "control" means the power to vote more than twenty per cent of outstanding
8 voting shares of a licensed corporation, partnership, association or trust.

9 S. The licensee is liable for any damage caused by any of the
10 licensee's employees while acting as an employee of the licensee.

11 T. A licensee shall comply with the requirements of section 6-114
12 relating to balloon payments.

13 U. The examination and course of study requirements of this section
14 shall be waived by the superintendent for any person applying for a license
15 who, within the six months immediately prior to the submission of the
16 application, has been a licensee or a responsible person pursuant to this
17 chapter.

18 V. If the applicant for renewal of a mortgage broker license is a
19 natural person, the applicant shall have satisfactorily completed twelve
20 continuing education units by a continuing education provider approved by the
21 superintendent before submitting the renewal application. If the applicant
22 is other than a natural person, the designated responsible individual shall
23 have satisfactorily completed twelve continuing education units by a
24 continuing education provider approved by the superintendent before
25 submitting the renewal application. An applicant for renewal of a commercial
26 mortgage broker license is not subject to the continuing education
27 requirements prescribed by this article.

28 W. A licensee who employs a loan originator shall comply with section
29 6-991.03.

30 Sec. 2. Section 6-943, Arizona Revised Statutes, is amended to read:
31 6-943. Licensing of mortgage bankers required; qualifications;
32 application; bond; fees; renewal

33 A. A person shall not act as a mortgage banker if he is not licensed
34 under this article.

35 B. The superintendent shall not grant a mortgage banker's license to a
36 person, other than a natural person, who is not registered to do business in
37 this state on the date of application for a license. The superintendent
38 shall not issue a mortgage banker's license or a renewal of a license to an
39 applicant unless the applicant meets all of the requirements prescribed in
40 subsection C of this section. The superintendent shall determine whether the
41 applicant meets the requirements based on the application, ~~and~~ and evidence
42 presented at a hearing, if any, or any other evidence that the superintendent
43 may have regarding qualifications of the applicant.

1 C. In order to qualify for a mortgage banker license or a renewal of a
2 license, an applicant shall:

3 1. Have not fewer than three years' experience in the business of
4 making mortgage banking loans or equivalent lending experience in a related
5 business. If the applicant is a person other than a natural person, the
6 responsible individual shall meet this requirement.

7 2. Have engaged or intend to engage in the business of making mortgage
8 loans or mortgage banking loans.

9 3. ~~Either:~~

10 ~~(a)~~ Be authorized to do business with any of the following:

11 ~~(i)~~ (a) The federal housing administration.

12 ~~(ii)~~ (b) The ~~veterans administration~~ UNITED STATES DEPARTMENT OF
13 VETERANS AFFAIRS.

14 ~~(iii)~~ (c) The federal national mortgage association.

15 ~~(iv)~~ (d) The federal home loan mortgage corporation.

16 ~~(b) Notwithstanding paragraph 5 of this subsection, at all times have~~
17 ~~and maintain a net worth of not less than two hundred fifty thousand dollars.~~

18 4. Provide the superintendent with a current audited financial
19 statement or that of its parent company prepared by an independent certified
20 public accountant in accordance with generally accepted accounting principles
21 including:

22 (a) The certified public accountant's opinion as to the fairness of
23 the presentation in conformity with generally accepted accounting principles.

24 (b) A balance sheet prepared within the previous six months and
25 certified by the licensee. The superintendent may require a more recent
26 balance sheet.

27 (c) A statement of operations and retained earnings and a statement of
28 changes in financial position provided the applicant has commenced
29 operations.

30 (d) Notes to the financial statement if applicable.

31 5. At all times have and maintain a net worth of not less than one
32 hundred thousand dollars.

33 D. A person shall make an application for a license or for a renewal
34 of a license in writing on the forms, in the manner and accompanied by the
35 information prescribed by the superintendent including the requirements
36 prescribed in subsection C of this section. The superintendent may require
37 additional information on the experience, background, honesty, truthfulness,
38 integrity and competency of the applicant and any responsible individual
39 designated by the applicant. If the applicant is a person other than a
40 natural person, the superintendent may require information as to the honesty,
41 truthfulness, integrity and competency of any officer, director, shareholder,
42 member, partner, trustee, employee or other interested party of the
43 association, corporation or group.

1 E. The nonrefundable application fee and annual renewal fee shall be
2 as prescribed in section 6-126. The nonrefundable application fee shall
3 accompany each application for an original license only.

4 F. If a licensee is a person other than a natural person, the license
5 issued to it entitles all officers, directors, members, partners, trustees
6 and employees of the licensed corporation, partnership, association or trust
7 to engage in the mortgage banking business if one officer, director, member,
8 partner, employee or trustee of the person is designated in the license as
9 the individual responsible for the person under this article. If a licensee
10 is a natural person, the license entitles all employees of the licensee to
11 engage in the mortgage banking business. If the natural person is not a
12 resident of this state, an employee of the licensee shall be designated in
13 the license as the individual responsible for the licensee under this
14 article. For the purposes of this article, an employee does not include an
15 independent contractor. For the purposes of this article, a responsible
16 individual shall be a resident of this state, shall be in active management
17 of the activities of the licensee governed by this article and shall have not
18 less than three years' experience in the business of making mortgage banking
19 loans or equivalent experience in a related business.

20 G. A licensee shall notify the superintendent that its responsible
21 individual will cease to be in active management of the licensee within ten
22 days of learning that fact. Not more than ninety days after the
23 superintendent receives the notice, the licensee shall place itself under the
24 active management of a qualified responsible person and notify the
25 superintendent. If the licensee is not placed under active management of a
26 qualified responsible individual and if notice is not received by the
27 superintendent within the ninety day period, the license of the licensee
28 expires.

29 H. Every person licensed as a mortgage banker shall deposit with the
30 superintendent, before doing business as a mortgage banker, a bond executed
31 by the licensee as principal and a surety company authorized to do business
32 in this state as surety. The bond shall be conditioned on the faithful
33 compliance of the licensee, including his directors, officers, members,
34 partners, trustees and employees, with this article. Only one bond is
35 required for a person, firm, association or corporation irrespective of the
36 number of officers, directors, members, partners or trustees who are employed
37 by or are members of the firm, association or corporation. The bond is
38 payable to any person injured by the wrongful act, default, fraud or
39 misrepresentation of the licensee and to this state for the benefit of any
40 injured person. The coverage shall be maintained in the minimum amount
41 prescribed in this subsection, computed on a base consisting of the total
42 assets of the licensee plus the unpaid balance of loans ~~which~~ it has
43 contracted to service for others as of the end of the licensee's fiscal year.

1	Base	Minimum Bond
2	Not over \$1,000,000	\$25,000 for the first \$500,000 plus
3		\$5,000 for each \$100,000 or fraction
4		thereof over \$500,000
5	\$1,000,001 to \$10,000,000	\$50,000 plus \$5,000 for each \$1,800,000
6		or fraction thereof over \$1,000,000
7	\$10,000,001 to \$100,000,000	\$75,000 plus \$5,000 for each \$18,000,000
8		or fraction thereof over \$10,000,000
9	\$100,000,001 and over	\$100,000

10 No suit may be commenced on the bond after the expiration of one year
 11 following the commission of the act on which the suit is based, except that
 12 claims for fraud or mistake are limited to the limitation period provided in
 13 section 12-543, paragraph 3. If any injured person commences an action for a
 14 judgment to collect on the bond, the injured person shall notify the
 15 superintendent of the action in writing at the time of the commencement of
 16 the action and shall provide copies of all documents relating to the action
 17 to the superintendent on request.

18 I. Notwithstanding subsection H of this section, the bond required
 19 shall be twenty-five thousand dollars for licensees whose investors are
 20 limited solely to institutional investors.

21 J. For THE purposes of subsection I of this section:

22 1. "Institutional investor" means a state or national bank, a state or
 23 federal savings and loan association, a state or federal savings bank, a
 24 state or federal credit union, a federal government agency or
 25 instrumentality, a quasi-federal government agency, a financial enterprise, a
 26 licensed real estate broker or salesman, a profit sharing or pension trust,
 27 or an insurance company.

28 2. "Investor" means any person who directly or indirectly provides TO
 29 A MORTGAGE BANKER funds ~~to a mortgage banker which funds~~ THAT are, or are
 30 intended to be, used in the making of a loan, and any person who purchases a
 31 loan, or any interest therein, from a mortgage banker or in a transaction
 32 that has been directly or indirectly arranged or negotiated by a mortgage
 33 banker.

34 K. Notwithstanding section 35-155, in lieu of the bond described in
 35 this section, an applicant for a license or a licensee may deposit with the
 36 superintendent a deposit in the form of cash or alternatives to cash in the
 37 amount prescribed in subsection H or I of this section, as applicable. The
 38 superintendent may accept any of the following as an alternative to cash:

39 1. Certificates of deposit or investment certificates ~~which~~ THAT are
 40 payable or assigned to the state treasurer, issued by banks or savings banks
 41 doing business in this state and fully insured by the federal deposit
 42 insurance corporation or any successor institution.

43 2. Certificates of deposit, investment certificates or share accounts
 44 ~~which~~ THAT are payable or assigned to the state treasurer, issued by a

1 savings and loan association doing business in this state and fully insured
2 by the federal deposit insurance corporation or any successor institution.

3 3. Certificates of deposit, investment certificates or share accounts
4 ~~which~~ THAT are payable or assigned to the state treasurer, issued by a credit
5 union doing business in this state and fully insured by the national credit
6 union administration or any successor institution.

7 L. The superintendent shall deposit the cash or alternatives to cash
8 received under this section with the state treasurer. The state treasurer
9 shall hold the cash or alternatives to cash in the name of this state to
10 guarantee the faithful performance of all legal obligations of the person
11 required to post bond pursuant to this section. The person is entitled to
12 receive any accrued interest earned from the alternatives to cash. The state
13 treasurer may impose a fee to reimburse the state treasurer for
14 administrative expenses. The fee shall not exceed ten dollars for each cash
15 or alternatives to cash deposit and shall be paid by the applicant or
16 licensee. The state treasurer may prescribe rules relating to the terms and
17 conditions of each type of security provided by this section.

18 M. In addition to such other terms and conditions as the
19 superintendent prescribes by rule or order, the principal amount of the
20 deposit shall be released only on written authorization of the superintendent
21 or on the order of a court of competent jurisdiction. The principal amount
22 of the deposit shall not be released before the expiration of three years
23 from the first to occur of any of the following:

- 24 1. The date of substitution of a bond for a cash alternative.
- 25 2. The surrender of the license.
- 26 3. The revocation of the license.
- 27 4. The expiration of the license.

28 N. A licensee or an employee of the licensee shall not advertise for
29 or solicit mortgage banking business in any manner without using the name and
30 license number as issued on the mortgage banker's principal place of business
31 license, except that a licensee may also employ or refer to the commonly used
32 name and any trademarks or service marks of any affiliate. If a license is
33 issued in the name of a natural person, nothing in the advertising or
34 solicitation may imply that the license is in the name of another person or
35 entity. For the purposes of this subsection, advertise does not include
36 business cards, radio and television advertising directed at national or
37 regional markets and promotional items except if those items contain rates or
38 terms on which a mortgage loan or mortgage banking loan may be obtained.

39 O. A licensee shall not employ any person unless the licensee:

- 40 1. Conducts a reasonable investigation of the background, honesty,
41 truthfulness, integrity and competency of the employee before hiring.
- 42 2. Keeps a record of the investigation for not less than two years
43 after termination.

1 P. The licensee is liable for any damage caused by any of his
2 employees while engaged in the business of making mortgage loans or mortgage
3 banking loans.

4 Q. A licensee shall comply with the requirements of section 6-114
5 relating to balloon payments.

6 R. Notwithstanding subsection C, paragraph 4 of this section,
7 licensees and applicants whose own resources are derived exclusively from
8 correspondent contracts between mortgage bankers and banks, savings banks,
9 trust companies, savings and loan associations, credit unions, profit sharing
10 or pension trusts, consumer lenders or insurance companies shall provide the
11 superintendent with a current financial statement or that of its parent
12 company prepared in accordance with generally accepted accounting principles
13 including:

14 1. A balance sheet prepared within the previous six months and
15 certified by the licensee. The superintendent may require a more recent
16 balance sheet.

17 2. A statement of operations and retained earnings and a statement of
18 changes in financial position provided the applicant has commenced
19 operations.

20 3. Notes to the financial statement if applicable.

21 S. In addition to the grounds specified in section 6-945, subsection
22 A, failure of a licensee to operate the business of making mortgage loans or
23 mortgage banking loans for a continuous period of twelve months or more shall
24 constitute grounds for revocation of such license. The superintendent, ~~upon~~
25 **ON** good cause shown, may extend the time for operating such business for a
26 single fixed period, which shall not exceed twelve months.

27 T. If the applicant for renewal of a mortgage banker license is a
28 natural person, the applicant shall have satisfactorily completed twelve
29 continuing education units by a continuing education provider approved by the
30 superintendent before submitting the renewal application. If the applicant
31 is other than a natural person, the designated responsible individual shall
32 have satisfactorily completed twelve continuing education units by a
33 continuing education provider approved by the superintendent before
34 submitting the renewal application.

35 U. A licensee who employs a loan originator shall comply with section
36 6-991.03.