

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

CHAPTER 174
HOUSE BILL 2079

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:
44 1. A balance sheet prepared within the immediately preceding six
45 months and certified by the licensee. The superintendent may require a more
46 recent balance sheet.

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

3 3. Notes to the financial statement if applicable.

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

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

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

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

42 J. Every person licensed as a mortgage broker or a commercial mortgage
43 broker shall deposit with the superintendent, before doing business as a
44 mortgage broker or a commercial mortgage broker, a bond executed by the
45 licensee as principal and a surety company authorized to do business in this
46 state as surety. The bond shall be conditioned on the faithful compliance of

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

16 K. The bond required by this section shall be ten thousand dollars for
17 licensees whose investors are limited solely to institutional investors, and
18 fifteen thousand dollars for licensees whose investors include any
19 noninstitutional investors.

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

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

27 2. "Investor" means any person who directly or indirectly provides to
28 a mortgage broker funds that are, or are intended to be, used in the making
29 of a loan, and any person who purchases a loan, or any interest therein, from
30 a mortgage broker or in a transaction that has been directly or indirectly
31 arranged or negotiated by a mortgage broker.

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

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

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

45 3. Certificates of deposit, investment certificates or share accounts
46 that are payable or assigned to the state treasurer, issued by a credit union

1 doing business in this state and fully insured by the national credit union
2 administration or any successor institution.

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

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

- 20 1. The date of substitution of a bond for a cash alternative.
- 21 2. The surrender of the license.
- 22 3. The revocation of the license.
- 23 4. The expiration of the license.

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

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

- 36 1. Conducts a reasonable investigation of the background, honesty,
37 truthfulness, integrity and competency of the employee before hiring.
- 38 2. Keeps a record of the investigation for not less than two years
39 after termination.

40 R. A license is not transferable or assignable and control of a
41 licensee may not be acquired through a stock purchase or other device without
42 the prior written consent of the superintendent. Written consent shall not
43 be given if the superintendent finds that any of the grounds for denial,
44 revocation or suspension of a license as set forth in section 6-905 are
45 applicable to the acquiring person. For the purposes of this subsection,

1 "control" means the power to vote more than twenty per cent of outstanding
2 voting shares of a licensed corporation, partnership, association or trust.

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

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

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

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

22 W. A licensee who employs a loan originator shall comply with section
23 6-991.03.

24 Sec. 2. Section 6-943, Arizona Revised Statutes, is amended to read:
25 6-943. Licensing of mortgage bankers required; qualifications;
26 application; bond; fees; renewal

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

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

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

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

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

46 3. Either:

- 1 (a) Be authorized to do business with any of the following:
2 (i) The federal housing administration.
3 (ii) The ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS
4 AFFAIRS.
5 (iii) The federal national mortgage association.
6 (iv) The federal home loan mortgage corporation.
7 (b) Notwithstanding paragraph 5 of this subsection, at all times have
8 and maintain a net worth of not less than ~~two hundred fifty~~ ONE HUNDRED
9 thousand dollars.

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

- 14 (a) The certified public accountant's opinion as to the fairness of
15 the presentation in conformity with generally accepted accounting principles.
16 (b) A balance sheet prepared within the previous six months and
17 certified by the licensee. The superintendent may require a more recent
18 balance sheet.
19 (c) A statement of operations and retained earnings and a statement of
20 changes in financial position provided the applicant has commenced
21 operations.
22 (d) Notes to the financial statement if applicable.

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

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

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

39 F. If a licensee is a person other than a natural person, the license
40 issued to it entitles all officers, directors, members, partners, trustees
41 and employees of the licensed corporation, partnership, association or trust
42 to engage in the mortgage banking business if one officer, director, member,
43 partner, employee or trustee of the person is designated in the license as
44 the individual responsible for the person under this article. If a licensee
45 is a natural person, the license entitles all employees of the licensee to
46 engage in the mortgage banking business. If the natural person is not a

1 resident of this state, an employee of the licensee shall be designated in
2 the license as the individual responsible for the licensee under this
3 article. For the purposes of this article, an employee does not include an
4 independent contractor. For the purposes of this article, a responsible
5 individual shall be a resident of this state, shall be in active management
6 of the activities of the licensee governed by this article and shall have not
7 less than three years' experience in the business of making mortgage banking
8 loans or equivalent experience in a related business.

9 G. A licensee shall notify the superintendent that its responsible
10 individual will cease to be in active management of the licensee within ten
11 days of learning that fact. Not more than ninety days after the
12 superintendent receives the notice, the licensee shall place itself under the
13 active management of a qualified responsible person and notify the
14 superintendent. If the licensee is not placed under active management of a
15 qualified responsible individual and if notice is not received by the
16 superintendent within the ninety day period, the license of the licensee
17 expires.

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

33 Base	Minimum Bond
34 Not over \$1,000,000	\$25,000 for the first \$500,000 plus 35 \$5,000 for each \$100,000 or fraction 36 thereof over \$500,000
37 \$1,000,001 to \$10,000,000	\$50,000 plus \$5,000 for each \$1,800,000 38 or fraction thereof over \$1,000,000
39 \$10,000,001 to \$100,000,000	\$75,000 plus \$5,000 for each \$18,000,000 40 or fraction thereof over \$10,000,000
41 \$100,000,001 and over	\$100,000

42 No suit may be commenced on the bond after the expiration of one year
43 following the commission of the act on which the suit is based, except that
44 claims for fraud or mistake are limited to the limitation period provided in
45 section 12-543, paragraph 3. If any injured person commences an action for a
46 judgment to collect on the bond, the injured person shall notify the

1 superintendent of the action in writing at the time of the commencement of
2 the action and shall provide copies of all documents relating to the action
3 to the superintendent on request.

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

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

8 1. "Institutional investor" means a state or national bank, a state or
9 federal savings and loan association, a state or federal savings bank, a
10 state or federal credit union, a federal government agency or
11 instrumentality, a quasi-federal government agency, a financial enterprise, a
12 licensed real estate broker or salesman, a profit sharing or pension trust,
13 or an insurance company.

14 2. "Investor" means any person who directly or indirectly provides TO
15 A MORTGAGE BANKER funds ~~to a mortgage banker which funds~~ THAT are, or are
16 intended to be, used in the making of a loan, and any person who purchases a
17 loan, or any interest therein, from a mortgage banker or in a transaction
18 that has been directly or indirectly arranged or negotiated by a mortgage
19 banker.

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

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

29 2. Certificates of deposit, investment certificates or share accounts
30 ~~which~~ THAT are payable or assigned to the state treasurer, issued by a
31 savings and loan association doing business in this state and fully insured
32 by the federal deposit insurance corporation or any successor institution.

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

37 L. The superintendent shall deposit the cash or alternatives to cash
38 received under this section with the state treasurer. The state treasurer
39 shall hold the cash or alternatives to cash in the name of this state to
40 guarantee the faithful performance of all legal obligations of the person
41 required to post bond pursuant to this section. The person is entitled to
42 receive any accrued interest earned from the alternatives to cash. The state
43 treasurer may impose a fee to reimburse the state treasurer for
44 administrative expenses. The fee shall not exceed ten dollars for each cash
45 or alternatives to cash deposit and shall be paid by the applicant or

1 licensee. The state treasurer may prescribe rules relating to the terms and
2 conditions of each type of security provided by this section.

3 M. In addition to such other terms and conditions as the
4 superintendent prescribes by rule or order, the principal amount of the
5 deposit shall be released only on written authorization of the superintendent
6 or on the order of a court of competent jurisdiction. The principal amount
7 of the deposit shall not be released before the expiration of three years
8 from the first to occur of any of the following:

- 9 1. The date of substitution of a bond for a cash alternative.
- 10 2. The surrender of the license.
- 11 3. The revocation of the license.
- 12 4. The expiration of the license.

13 N. A licensee or an employee of the licensee shall not advertise for
14 or solicit mortgage banking business in any manner without using the name and
15 license number as issued on the mortgage banker's principal place of business
16 license, except that a licensee may also employ or refer to the commonly used
17 name and any trademarks or service marks of any affiliate. If a license is
18 issued in the name of a natural person, nothing in the advertising or
19 solicitation may imply that the license is in the name of another person or
20 entity. For the purposes of this subsection, advertise does not include
21 business cards, radio and television advertising directed at national or
22 regional markets and promotional items except if those items contain rates or
23 terms on which a mortgage loan or mortgage banking loan may be obtained.

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

- 25 1. Conducts a reasonable investigation of the background, honesty,
26 truthfulness, integrity and competency of the employee before hiring.
- 27 2. Keeps a record of the investigation for not less than two years
28 after termination.

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

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

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

- 42 1. A balance sheet prepared within the previous six months and
43 certified by the licensee. The superintendent may require a more recent
44 balance sheet.

1 2. A statement of operations and retained earnings and a statement of
2 changes in financial position provided the applicant has commenced
3 operations.

4 3. Notes to the financial statement if applicable.

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

11 T. If the applicant for renewal of a mortgage banker license is a
12 natural person, the applicant shall have satisfactorily completed twelve
13 continuing education units by a continuing education provider approved by the
14 superintendent before submitting the renewal application. If the applicant
15 is other than a natural person, the designated responsible individual shall
16 have satisfactorily completed twelve continuing education units by a
17 continuing education provider approved by the superintendent before
18 submitting the renewal application.

19 U. A licensee who employs a loan originator shall comply with section
20 6-991.03.

APPROVED BY THE GOVERNOR APRIL 4, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2012.