

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2296

AN ACT

AMENDING TITLE 6, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 6-912; AMENDING SECTIONS 6-991.02, 6-991.03 AND 6-991.04, ARIZONA REVISED STATUTES; RELATING TO MORTGAGE BROKERS AND LOAN ORIGINATORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, chapter 9, article 1, Arizona Revised Statutes, is
3 amended by adding section 6-912, to read:

4 **6-912. Certificate of exemption**

5 A PERSON WHO IS EXEMPT FROM LICENSURE PURSUANT TO THIS ARTICLE AS A
6 FEDERALLY CHARTERED SAVINGS BANK THAT IS REGISTERED WITH THE NATIONWIDE
7 MORTGAGE LICENSING SYSTEM AND REGISTRY MAY FILE A WRITTEN APPLICATION WITH
8 THE DEPARTMENT FOR A CERTIFICATE OF EXEMPTION FOR THE FOLLOWING PURPOSES:

9 1. REGISTERING WITH THE DEPARTMENT EXCEPT THAT THE REGISTRATION SHALL
10 NOT AFFECT THE EXEMPT STATUS OF THE APPLICANT.

11 2. SPONSORING ONE OR MORE MORTGAGE LOAN ORIGINATORS.

12 3. FULFILLING ANY REPORTING REQUIREMENTS.

13 4. REASONABLY SUPERVISING THE ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR
14 WHO IS LICENSED PURSUANT TO ARTICLE 4 OF THIS CHAPTER AND WHO IS EMPLOYED BY
15 OR UNDER EXCLUSIVE CONTRACT WITH THE APPLICANT.

16 B. A PERSON SHALL MAKE AN APPLICATION FOR A CERTIFICATE OF EXEMPTION
17 OR RENEWAL OF A CERTIFICATE OF EXEMPTION IN WRITING ON THE FORMS, IN THE
18 MANNER AND ACCCOMPANIED BY THE INFORMATION PRESCRIBED BY THE SUPERINTENDENT.
19 THE SUPERINTENDENT MAY REQUIRE ADDITIONAL INFORMATION ON THE EXPERIENCE,
20 BACKGROUND, HONESTY, TRUTHFULNESS, INTEGRITY AND COMPETENCY OF THE APPLICANT
21 AND THE RESPONSIBLE INDIVIDUAL DESIGNATED BY THE APPLICANT.

22 C. THE DEPARTMENT MAY CHARGE A FEE FOR PROCESSING THE ORIGINAL OR
23 RENEWAL APPLICATION FOR A CERTIFICATE OF EXEMPTION AND FOR OTHER COSTS
24 INCURRED BY THE DEPARTMENT.

25 D. AN EXEMPT PERSON SHALL NOTIFY THE SUPERINTENDENT THAT IT HAS
26 DESIGNATED A RESPONSIBLE INDIVIDUAL TO ACTIVELY MANAGE THE ACTIVITIES OF THE
27 MORTGAGE LOAN ORIGINATOR LICENSEES. THE RESPONSIBLE INDIVIDUAL MAY BE
28 LOCATED IN THIS STATE OR IN THE STATE WHERE THE PRIMARY BUSINESS OF THE BANK
29 IS CONDUCTED AND SHALL HAVE AT LEAST THREE YEARS OF EXPERIENCE IN THE
30 BUSINESS OF MAKING MORTGAGE LOANS OR EQUIVALENT EXPERIENCE IN A RELATED
31 BUSINESS. THE RESPONSIBLE INDIVIDUAL MAY SUPERVISE ONE OR MORE LICENSED
32 MORTGAGE LOAN ORIGINATORS IN THIS STATE.

33 E. WITHIN TEN DAYS AFTER LEARNING THAT A RESPONSIBLE INDIVIDUAL WILL
34 CEASE MANAGING THE LICENSEES' ACTIVITIES, AN EXEMPT PERSON MUST NOTIFY THE
35 SUPERINTENDENT. WITHIN NINETY DAYS AFTER THE NOTIFICATION IS RECEIVED BY THE
36 SUPERINTENDENT, THE EXEMPT PERSON MUST REPLACE THE RESPONSIBLE INDIVIDUAL
37 WITH A PERSON WHO MEETS THE QUALIFICATIONS PRESCRIBED BY SUBSECTION C OF THIS
38 SECTION AND MUST NOTIFY THE SUPERINTENDENT OF THE REPLACEMENT. A CERTIFICATE
39 OF EXEMPTION EXPIRES IF EITHER OF THE FOLLOWING OCCURS:

40 1. THE EXEMPT PERSON IS NOT PLACED UNDER ACTIVE MANAGEMENT OF A
41 QUALIFIED RESPONSIBLE INDIVIDUAL.

42 2. THE EXEMPT PERSON DOES NOT PROVIDE NOTICE OF REPLACEMENT OF THE
43 RESPONSIBLE INDIVIDUAL TO THE SUPERINTENDENT AS PRESCRIBED BY THIS SECTION.

1 F. AFTER REVIEWING THE APPLICATION FOR A CERTIFICATE OF EXEMPTION AND
2 AFTER VERIFYING THE SUBMITTED INFORMATION, THE DEPARTMENT SHALL ISSUE THE
3 CERTIFICATE OF EXEMPTION.

4 G. AN EXEMPT PERSON WHO SPONSORS A LOAN ORIGINATOR ON AN EXCLUSIVE
5 CONTRACT SHALL COMPLY WITH SECTION 6-991.03.

6 H. THE SUPERINTENDENT MAY DENY A CERTIFICATE OF EXEMPTION TO A PERSON
7 OR SUSPEND OR REVOKE A CERTIFICATE OF EXEMPTION IF THE SUPERINTENDENT FINDS
8 THAT AN APPLICANT OR CERTIFICATE HOLDER HAS DONE ANY OF THE FOLLOWING:

9 1. SHOWN THAT THE APPLICANT OR CERTIFICATE HOLDER IS NOT A PERSON OF
10 HONESTY, TRUTHFULNESS AND GOOD CHARACTER.

11 2. VIOLATED ANY APPLICABLE LAW, RULE OR ORDER.

12 3. REFUSED OR FAILED TO FURNISH, WITHIN A REASONABLE TIME, ANY
13 INFORMATION OR MAKE ANY REPORT THAT MAY BE REQUIRED BY THE SUPERINTENDENT.

14 4. HAD A FINAL JUDGMENT ENTERED AGAINST THE APPLICANT OR CERTIFICATE
15 HOLDER IN A CIVIL ACTION ON GROUNDS OF FRAUD, DECEIT OR MISREPRESENTATION AND
16 THE CONDUCT ON WHICH THE JUDGMENT IS BASED INDICATES THAT IT WOULD BE
17 CONTRARY TO THE INTEREST OF THE PUBLIC TO PERMIT THE APPLICANT OR CERTIFICATE
18 HOLDER TO MANAGE A LOAN ORIGINATOR.

19 5. HAD AN ORDER ENTERED AGAINST THE APPLICANT OR CERTIFICATE HOLDER
20 INVOLVING FRAUD, DECEIT OR MISREPRESENTATION BY AN ADMINISTRATIVE AGENCY OF
21 THIS STATE, THE FEDERAL GOVERNMENT OR ANY OTHER STATE OR TERRITORY OF THE
22 UNITED STATES AND THE FACTS RELATING TO THE ORDER INDICATE THAT IT WOULD BE
23 CONTRARY TO THE INTEREST OF THE PUBLIC TO PERMIT THE APPLICANT OR CERTIFICATE
24 HOLDER TO MANAGE A LOAN ORIGINATOR.

25 6. MADE A MATERIAL MISSTATEMENT OR SUPPRESSED OR WITHHELD INFORMATION
26 ON THE APPLICATION FOR A CERTIFICATE OF EXEMPTION OR ANY DOCUMENT REQUIRED TO
27 BE FILED WITH THE SUPERINTENDENT.

28 I. IF A PERSON TO WHOM A CERTIFICATE OF EXEMPTION IS ISSUED OR WHO HAS
29 APPLIED FOR A CERTIFICATE OF EXEMPTION UNDER THIS ARTICLE IS INDICTED OR
30 INFORMED AGAINST FOR FORGERY, EMBEZZLEMENT, OBTAINING MONEY UNDER FALSE
31 PRETENSES, EXTORTION, CRIMINAL CONSPIRACY TO DEFRAUD OR A LIKE OFFENSE, AND A
32 CERTIFIED COPY OF THE INDICTMENT OR INFORMATION OR OTHER PROPER EVIDENCE OF
33 THE INDICTMENT OR INFORMATION IS FILED WITH THE SUPERINTENDENT, THE
34 SUPERINTENDENT MAY SUSPEND THE CERTIFICATE OF EXEMPTION ISSUED TO THE EXEMPT
35 PERSON OR REFUSE TO GRANT A CERTIFICATE OF EXEMPTION TO AN APPLICANT PENDING
36 TRIAL ON THE INDICTMENT.

37 Sec. 2. Section 6-991.02, Arizona Revised Statutes, is amended to
38 read:

39 6-991.02. Prohibited acts

40 ~~Beginning July 1, 2010.~~

41 1. A loan originator acting on the loan originator's own behalf
42 shall not accept any monies or documents in connection with an application
43 for a mortgage loan.

1 **2. B.** An individual is not entitled to receive compensation in
2 connection with arranging for or negotiating a mortgage loan if the
3 individual is not licensed pursuant to this chapter. An individual who is
4 not specifically exempted from licensure pursuant to this article shall not
5 engage in the business of a loan originator with respect to any dwelling in
6 this state without first obtaining and maintaining annually a license
7 pursuant to this article. Each licensed loan originator must register with
8 and maintain a valid unique identifier issued by the nationwide mortgage
9 licensing system and registry established by the secure and fair enforcement
10 for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United
11 States Code sections 5101 through 5116) or its successor.

12 **3. C.** A loan originator acting on the loan originator's own behalf
13 shall not advertise, display, distribute, broadcast or televise, or cause or
14 permit to be advertised, displayed, distributed, broadcast or televised, in
15 any manner, any solicitation of mortgage business.

16 **4. D.** A loan originator shall not make, negotiate or offer to make or
17 negotiate for compensation, either directly or indirectly, a loan that is
18 either:

19 **(a)** 1. Less than the minimum amount that the loan originator's
20 employer is allowed to make.

21 **(b)** 2. Not secured by a mortgage or deed of trust or other lien
22 interest in real property unless employed by a consumer lender.

23 **5. E.** A loan originator who is employed by a mortgage broker or
24 mortgage banker to act in the capacity of the mortgage broker or mortgage
25 banker shall not be employed concurrently by any other mortgage broker or
26 mortgage banker.

27 **6. F.** A loan originator shall not collect compensation for rendering
28 services as a real estate broker or real estate salesperson licensed pursuant
29 to title 32, chapter 20 unless both of the following apply:

30 **(a)** 1. The loan originator is licensed pursuant to title 32, chapter
31 20.

32 **(b)** 2. The employing mortgage broker or mortgage banker has disclosed
33 to the person from whom the compensation is collected at the time a mortgage
34 loan application is received that the loan originator is receiving
35 compensation both for mortgage broker or mortgage banker services, if
36 applicable, and for real estate broker or real estate salesperson services.

37 **7. G.** A loan originator shall not accept any assignment of the
38 borrower's wages or salary in connection with activities governed by this
39 article.

40 **8. H.** A loan originator shall not receive or disburse monies in
41 servicing or arranging a mortgage loan.

42 **9. I.** A loan originator shall not make a false promise or
43 misrepresentation or conceal an essential or material fact in the course of
44 the mortgage broker or mortgage banker business.

1 **10.** J. A loan originator shall not fail to truthfully account for the
2 monies belonging to a party to a mortgage loan transaction or fail to
3 disburse monies in accordance with the employing mortgage broker or mortgage
4 banker agreements.

5 **11.** K. A loan originator shall not engage in illegal or improper
6 business practices.

7 **12.** L. A loan originator shall not require a person seeking a loan
8 secured by real property to obtain property insurance coverage in an amount
9 that exceeds the replacement cost of the improvements as established by the
10 property insurer.

11 **13.** M. A loan originator shall not originate a mortgage loan unless
12 employed by a mortgage broker, mortgage banker or consumer lender **OR UNDER AN**
13 **EXCLUSIVE CONTRACT WITH AN EXEMPT PERSON WHO IS REGISTERED PURSUANT TO**
14 **SECTION 6-912.**

15 **14.** N. A loan originator shall not advertise for or solicit mortgage
16 business in any manner without all of the following:

17 **(a)** 1. The name and license number as issued on the employing
18 mortgage broker's, mortgage banker's or consumer lender's **OR THE REGISTERED**
19 **EXEMPT PERSON'S** principal place of business license.

20 **(b)** 2. Approval of the employing mortgage broker, mortgage banker or
21 consumer lender **OR THE REGISTERED EXEMPT PERSON.**

22 **(c)** 3. The unique identifier the loan originator maintains with the
23 nationwide mortgage licensing system and registry established by the secure
24 and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122
25 Stat. 2810; 12 United States Code sections 5101 through 5116) or its
26 successor.

27 **15.** O. On request, a loan originator shall make available to the
28 superintendent the books and records relating to the loan originator's
29 operations. The superintendent may have access to the books and records and
30 interview the officers, principals, employees, independent contractors,
31 agents and customers of the loan originator concerning their business. In
32 connection with a request pursuant to this **paragraph SUBSECTION**, a person may
33 not knowingly withhold, abstract, remove, mutilate, destroy or secrete any
34 books, records or other information.

35 **16.** P. A loan processor or underwriter who is an independent
36 contractor may not engage in the activities of a loan processor or
37 underwriter unless the loan processor or underwriter obtains and maintains a
38 license pursuant to section 6-991.03. Each independent contractor loan
39 processor or underwriter licensed as a loan originator must have and maintain
40 a valid unique identifier.

41 **17.** Q. An individual engaging solely in loan processor or underwriter
42 activities shall not represent to the public through advertising or other
43 means of communicating that the individual can or will perform any of the
44 activities of a loan originator.

1 Sec. 3. Section 6-991.03, Arizona Revised Statutes, is amended to
2 read:

3 **6-991.03. Licensing: renewal: qualifications: application: fees**

4 A. **Beginning July 1, 2010,** A natural person shall not act as a loan
5 originator unless licensed under this article.

6 B. **Beginning July 1, 2010,** The superintendent shall not grant a loan
7 originator license to a person, other than a natural person. An applicant
8 for an original loan originator's license shall have done all of the
9 following:

10 1. Satisfactorily completed a course of study, including at least
11 twenty hours of education, for loan originators approved by the
12 superintendent during the two year period immediately preceding the time of
13 application. The twenty hours of education must include at least all of the
14 following:

15 (a) Three hours of federal law.

16 (b) Three hours of ethics, which shall include instruction on fraud,
17 consumer protection and fair lending issues.

18 (c) Two hours of training related to lending standards of the
19 nontraditional mortgage product marketplace.

20 2. Passed a loan originator's examination pursuant to section 6-991.07
21 not more than one year before the granting of the license demonstrating
22 knowledge and understanding of the following:

23 (a) Federal laws.

24 (b) Laws of this state.

25 (c) Subjects described in section 6-991.07, subsection A.

26 3. Obtained a unique identifier through the nationwide mortgage
27 licensing system and registry established by the secure and fair enforcement
28 for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United
29 States Code sections 5101 through 5116) or its successor.

30 4. Deposited with the superintendent a bond executed by the
31 applicant's employer as principal and a surety company licensed to do
32 business in this state as a surety pursuant to section 6-903 or 6-943.

33 5. Submitted fingerprints to the department for the purpose of a
34 background investigation.

35 6. Paid an amount to be determined by the superintendent for deposit
36 in the mortgage recovery fund established pursuant to section 6-991.09 or
37 deposited with the superintendent a bond executed by the applicant's employer
38 **OR REGISTERED EXEMPT PERSON** as principal and a surety company licensed **OR**
39 **APPROVED** to do business in this state for the benefit of any person aggrieved
40 by any act, representation, transaction or conduct of a licensed loan
41 originator that violates this title or the rules adopted pursuant to this
42 title. Notwithstanding section 6-903 or 6-943, the amount of the bond shall
43 be in an amount of not less than two hundred thousand dollars. Loan
44 originators working under the employer **OR REGISTERED EXEMPT PERSON** bond

1 described in this paragraph do not have to contribute to the mortgage
2 recovery fund.

3 C. A person shall make an application for a license or renewal of a
4 license in writing in the manner prescribed by the superintendent and
5 accompanied by the information prescribed by the superintendent.

6 D. Before submitting a renewal application, an applicant for renewal
7 of a loan originator license shall have satisfactorily completed eight
8 approved continuing education units that include at least:

9 1. Three hours of federal law.
10 2. Two hours of ethics, including instruction on fraud, consumer
11 protection and fair lending issues.

12 3. Two hours of training related to lending standards for the
13 nontraditional mortgage product marketplace.

14 E. Education courses taken before licensure shall be reviewed and
15 approved by the nationwide mortgage licensing system and registry established
16 by the secure and fair enforcement for mortgage licensing act of 2008 (P.L.
17 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or
18 its successor.

19 F. Continuing education courses shall be reviewed and approved by the
20 nationwide mortgage licensing system and registry established by the secure
21 and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122
22 Stat. 2810; 12 United States Code sections 5101 through 5116) or its
23 successor. A licensed loan originator:

24 1. May only receive credit for a continuing education course in the
25 year in which the course is taken.

26 2. May not take the same approved course in the same year or
27 successive years to meet the annual requirements for continuing education.

28 G. The nonrefundable application fee shall accompany each application
29 for an original loan originator license.

30 H. A license issued pursuant to this article is not transferable or
31 assignable.

32 I. At the superintendent's discretion, application fees may be waived
33 if the applicant is a housing counselor certified by the United States
34 department of housing and urban development and employed by a nonprofit
35 agency.

36 J. Each mortgage broker, ~~or~~ mortgage banker **OR REGISTERED EXEMPT**
37 **PERSON** shall submit to the nationwide mortgage licensing system and registry
38 established by the secure and fair enforcement for mortgage licensing act of
39 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 1501
40 through 5116) or its successor reports of condition that are in a form and
41 that contain information required by the nationwide mortgage licensing
42 system.

43 K. The superintendent shall establish a process for loan originators
44 to challenge information that the superintendent enters into the nationwide
45 mortgage licensing system and registry.

1 Sec. 4. Section 6-991.04, Arizona Revised Statutes, is amended to
2 read:

3 6-991.04. Issuance of license: notice from employing mortgage
4 broker, mortgage banker or consumer lender or
5 registered exempt person; renewal: inactive status:
6 address change: fee

7 A. The superintendent, on determining that an applicant is qualified
8 and has paid the required fees, shall issue a loan originator's license to
9 the applicant evidenced by a continuous certificate. The superintendent
10 shall grant or deny a license within one hundred twenty days after receiving
11 the completed application and fees. An applicant who has been denied a
12 license may not reapply for a license before one year from the date of the
13 previous application.

14 B. On issuance of the license, the superintendent shall keep the loan
15 originator's license until a mortgage broker or mortgage banker licensed
16 pursuant to this chapter or a consumer lender employs the loan originator and
17 the employer provides a written notice that the employer has hired the loan
18 originator **OR UNTIL AN EXEMPT PERSON WHO IS REGISTERED PURSUANT TO SECTION**
19 **6-912 PROVIDES A WRITTEN NOTICE THAT THE EXEMPT PERSON HAS ENGAGED THE LOAN**
20 **ORIGINATOR ON AN EXCLUSIVE CONTRACT WITH THE EXEMPT PERSON.** The employer
21 shall provide the notice before the loan originator begins working for the
22 employer. **EXEMPT PERSONS WHO ARE REGISTERED PURSUANT TO SECTION 6-912 SHALL**
23 **PROVIDE THE NOTICE BEFORE THE LOAN ORIGINATOR BEGINS WORK UNDER THE EXCLUSIVE**
24 **CONTRACT WITH THE EXEMPT PERSON.** The notice shall be from an officer or
25 other person authorized by the employer **OR REGISTERED EXEMPT PERSON.** The
26 notice shall contain a request for the loan originator's license and shall be
27 dated, signed and notarized. On receipt of the request, the superintendent
28 shall forward the loan originator's license to the employing mortgage broker,
29 mortgage banker or consumer lender **OR THE REGISTERED EXEMPT PERSON.**

30 C. Licenses shall be issued for a one year period.

31 D. A loan originator shall make application for renewal on forms
32 prescribed by the superintendent. The application shall include original
33 certificates evidencing the loan originator's successful completion of eight
34 continuing education units during the preceding one year period by a
35 continuing education provider approved by the superintendent.

36 E. A loan originator shall pay the renewal fee every year on or before
37 December 31. Licenses not renewed by December 31 are suspended and the
38 licensee shall not act as a loan originator until the license is renewed or a
39 new license is issued pursuant to this article. A person may renew a
40 suspended license by paying the renewal fee plus a dollar amount to be
41 determined by the superintendent for each day after December 31 that a
42 license renewal fee is not received by the superintendent.

43 F. Licenses that are not renewed by January 31 of each year expire. A
44 license shall not be granted to the holder of an expired license except as
45 provided in this article for the issuance of an original license.

1 G. From December 1 through December 31 of each renewal period, a
2 licensee may request inactive status for the following license period. The
3 license shall be placed on inactive status after the licensee pays to the
4 superintendent the inactive status renewal fee and surrenders the license to
5 the superintendent. During inactive status, an inactive licensee shall not
6 act as a loan originator. A licensee may not be on inactive status for more
7 than two consecutive renewal periods in any ten year period. The license
8 expires if the licensee violates this subsection.

9 H. At renewal an inactive licensee may return to active status by
10 doing all of the following:

- 11 1. Providing the superintendent with evidence that the licensee has
12 met the requirements of section 6-991.03, subsection B.
- 13 2. Making a written request to the superintendent for reactivation.
- 14 3. Paying the annual licensing fee.
- 15 4. Providing the superintendent with proof that the licensee meets all
16 other requirements for acting as a loan originator.

17 I. The ~~employing~~ mortgage broker, mortgage banker, ~~or~~ consumer lender
18 ~~OR REGISTERED EXEMPT PERSON~~ shall keep and maintain at the principal place of
19 business in this state the loan originator's license during the loan
20 originator's employment ~~OR EXCLUSIVE CONTRACT TERM~~. A copy of the loan
21 originator's license shall be available for public inspection during regular
22 business hours.

23 J. A loan originator shall immediately notify the superintendent of a
24 change in the loan originator's residence address. The superintendent shall
25 endorse the change of address on the license for a fee to be determined by
26 the superintendent.

27 K. Within five business days after any licensee's employment
28 termination, the employing mortgage broker, mortgage banker or consumer
29 lender ~~OR THE REGISTERED EXEMPT PERSON~~ shall do both of the following:

- 30 1. Notify the superintendent of the licensee's termination.
- 31 2. Return the license to the superintendent.

32 L. An applicant for a loan originator license who is currently
33 registered with the nationwide mortgage licensing system and registry
34 established by the secure and fair enforcement for mortgage licensing act of
35 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101
36 through 5116) or its successor may be granted a temporary license for a
37 period not to exceed one hundred eighty days.

38 M. The superintendent shall establish a process for loan originators
39 to challenge information that the superintendent enters into the nationwide
40 mortgage licensing system and registry.