

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 36
SENATE BILL 1014

AN ACT

AMENDING SECTIONS 6-126, 6-991 AND 6-991.05, ARIZONA REVISED STATUTES;
RELATING TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 6-126, Arizona Revised Statutes, is amended to
3 read:

4 6-126. Application fees for financial institutions and
5 enterprises

6 A. The following nonrefundable fees are payable to the department with
7 the filing of the following applications:

8 1. To apply for a banking permit, ten thousand dollars.

9 2. To apply for an amendment to a banking or savings and loan
10 association permit, one thousand dollars.

11 3. To establish each banking branch office, one thousand five hundred
12 dollars.

13 4. To move a banking office to other than an established office of a
14 bank, one thousand dollars.

15 5. To apply for a savings and loan association permit, ten thousand
16 dollars.

17 6. To establish each savings and loan association branch office, one
18 thousand five hundred dollars.

19 7. To move an office of a savings and loan association to other than
20 an established office, one thousand dollars.

21 8. To organize and establish a credit union, one hundred dollars.

22 9. To establish each credit union branch or to move a credit union
23 office to other than an established office of a credit union, two hundred
24 fifty dollars.

25 10. To organize and establish any other financial institutions for
26 which an application or investigation fee is not otherwise provided by law,
27 two thousand five hundred dollars.

28 11. To acquire control of a financial institution, other than a
29 consumer lender, five thousand dollars.

30 12. To apply for a trust company license, five thousand dollars.

31 13. To apply for a commercial mortgage banker, mortgage banker, escrow
32 agent or consumer lender license, one thousand five hundred dollars.

33 14. To apply for a mortgage broker, commercial mortgage broker, sales
34 finance company or debt management company license, eight hundred dollars.

35 15. To apply for a collection agency license, one thousand five hundred
36 dollars.

37 16. To apply for a deferred presentment company license, one thousand
38 dollars.

39 17. To apply for a motor vehicle dealer license, three hundred dollars.

40 18. To apply for a branch office of an escrow agent, consumer lender,
41 commercial mortgage banker, mortgage banker, trust company, money
42 transmitter, collection agency or deferred presentment company, five hundred
43 dollars.

44 19. To apply for a branch office of a mortgage broker, commercial
45 mortgage broker, debt management company or sales finance company, two
46 hundred fifty dollars.

1 20. To apply for approval of the articles of incorporation of a
2 business development corporation, five hundred dollars.

3 21. To apply for approval for the merger or consolidation of two or
4 more financial institutions, five thousand dollars per institution.

5 22. To apply for approval to convert from a national bank or federal
6 savings and loan charter to a state chartered institution, five thousand
7 dollars.

8 23. To apply for approval to convert from a federal credit union to a
9 state chartered credit union, one thousand dollars.

10 24. To apply for approval to merge or consolidate two or more credit
11 unions, five hundred dollars per credit union.

12 25. To move an established office of an enterprise to other than an
13 established office, fifty dollars.

14 26. To issue a duplicate or replace a lost enterprise's license, one
15 hundred dollars.

16 27. To change a responsible person on a mortgage broker's, commercial
17 mortgage broker's, commercial mortgage banker's or a mortgage banker's
18 license, two hundred fifty dollars.

19 28. To change an active manager on a collection agency license or a
20 manager of a money transmitter branch office license, two hundred fifty
21 dollars.

22 29. To change the licensee name on a financial institution or
23 enterprise license, **NOT MORE THAN** two hundred fifty dollars.

24 30. To apply for a money transmitter license, one thousand five hundred
25 dollars plus twenty-five dollars for each branch office and authorized
26 delegate to a maximum of four thousand five hundred dollars.

27 31. To acquire control of any money transmitter or controlling person
28 pursuant to chapter 12 of this title, two thousand five hundred dollars.

29 32. To receive the following publications:

30 (a) Quarterly bank and savings and loan statement of condition, not
31 more than ten dollars per copy.

32 (b) Monthly summary of actions report, not more than five dollars per
33 copy.

34 (c) A list of licensees, a monthly pending actions report and all
35 other in-house prepared reports or listings made available to the public, not
36 more than one dollar per page.

37 33. To apply for a loan originator license, an amount to be determined
38 by the superintendent.

39 34. To apply for a loan originator license transfer, an amount to be
40 determined by the superintendent.

41 35. To apply for a conversion from a mortgage banker license to a
42 mortgage broker license, an amount to be determined by the superintendent.

43 B. On issuance of a license or permit for a financial institution or
44 enterprise, the superintendent shall collect the first year's annual
45 assessment or renewal fee for the financial institution or enterprise

1 prorated according to the number of quarters remaining until the date of the
2 next annual assessment or renewal.

3 C. The following annual renewal fees shall be paid each year:

4 1. For an escrow agent, or trust company, one thousand dollars plus
5 two hundred fifty dollars for each branch office.

6 2. For a debt management company or sales finance company, five
7 hundred dollars plus two hundred dollars for each branch office.

8 3. For a collection agency, six hundred dollars plus two hundred
9 dollars for each branch office.

10 4. For a motor vehicle dealer, one hundred fifty dollars.

11 5. For an inactive mortgage broker or commercial mortgage broker, two
12 hundred fifty dollars.

13 6. For a mortgage banker that negotiates or closes in the aggregate
14 one hundred loans or less in the immediately preceding calendar year, seven
15 hundred fifty dollars, and for a mortgage banker that negotiates or closes in
16 the aggregate over one hundred loans in the immediately preceding calendar
17 year, one thousand two hundred fifty dollars. In addition, a mortgage banker
18 shall pay two hundred fifty dollars for each branch office.

19 7. For a commercial mortgage banker, one thousand two hundred fifty
20 dollars. In addition, a commercial mortgage banker shall pay two hundred
21 fifty dollars for each branch office.

22 8. For a mortgage broker or commercial mortgage broker that negotiates
23 or closes in the aggregate fifty loans or less in the immediately preceding
24 calendar year, two hundred fifty dollars and for a mortgage broker or
25 commercial mortgage broker that negotiates or closes in the aggregate more
26 than fifty loans in the immediately preceding calendar year, five hundred
27 dollars. In addition, a mortgage broker or commercial mortgage broker shall
28 pay two hundred dollars for each branch office.

29 9. For a consumer lender, one thousand dollars plus two hundred
30 dollars for each branch office.

31 10. For a money transmitter, five hundred dollars plus twenty-five
32 dollars for each branch office and each authorized delegate to a maximum of
33 two thousand five hundred dollars.

34 11. For a deferred presentment company, four hundred dollars. In
35 addition, a deferred presentment company shall pay two hundred dollars for
36 each branch office.

37 12. For a loan originator, an amount to be determined by the
38 superintendent.

39 13. For an inactive status loan originator, an amount to be determined
40 by the superintendent.

41 D. The license, renewal or branch office permit fee for a premium
42 finance company for each calendar year or part thereof shall not be less than
43 one hundred dollars or more than three hundred dollars as set by the
44 superintendent. If the license is issued or the branch office is opened
45 after June 30 in any year, the fees shall not be less than fifty dollars or
46 more than one hundred fifty dollars for that year.

1 Sec. 2. Section 6-991, Arizona Revised Statutes, is amended to read:

2 6-991. Definitions

3 In this article, unless the context otherwise requires:

4 1. "Affiliate" means an entity that directly or indirectly, through
5 intermediaries, controls, is controlled by or is under common control with
6 the entity specified.

7 2. "Clerical or support duties" means duties subsequent to the receipt
8 of a residential mortgage loan application, including both of the following:

9 (a) The receipt, collection, distribution and analysis of information
10 common for the processing or underwriting of a residential mortgage loan.

11 (b) The communication with a consumer to obtain the information
12 necessary for the processing or underwriting of a loan if the communication
13 does not include offering or negotiating loan rates or terms or counseling
14 consumers about residential mortgage loan rates or terms.

15 3. "Consumer lender" means a person who is licensed pursuant to
16 chapter 5 of this title.

17 4. "Continuing education unit" means a fifty minute period of time in
18 a continuing education course that relates to the mortgage industry or to
19 mortgage transactions, including courses taken to maintain recognized
20 industry designations.

21 5. "Depository institution" has the same meaning prescribed in the
22 federal deposit insurance act (12 United States Code section 1813) and
23 includes credit unions.

24 6. "Federal banking agency" means the board of governors of the
25 federal reserve system, the comptroller of the currency, the director of the
26 office of thrift supervision, the national credit union administration or the
27 federal deposit insurance corporation.

28 7. "Immediate family member" means a spouse, child, sibling, parent,
29 grandparent, grandchild, stepparent, stepchild or stepsibling whether related
30 by adoption or blood.

31 8. "Judgment" means either:

32 (a) A final judgment in a court of competent jurisdiction.

33 (b) A criminal restitution order issued pursuant to section 13-603 or
34 18 United States Code section 3663.

35 (c) An arbitration award that includes findings of fact and
36 conclusions of law, that has been confirmed and reduced to judgment pursuant
37 to section 12-133 and that was rendered according to title 12 and the rules
38 of the American arbitration association or another recognized arbitration
39 body.

40 9. "Judgment debtor" means any defendant under this article who is the
41 subject of a judgment.

42 10. "License" means a license issued under this article.

43 11. "Licensee" means a person licensed under this article.

44 12. "Loan originator":

45 (a) Means a natural person who for compensation or gain or in the
46 expectation of compensation or gain does any of the following:

- 1 (i) Takes a residential mortgage loan application.
2 (ii) Offers or negotiates terms of a residential mortgage loan.
3 (iii) On behalf of a borrower, negotiates with a lender or noteholder
4 to obtain a temporary or permanent modification in an existing residential
5 mortgage loan agreement.
6 (b) Does not include:
7 (i) An individual engaged solely as a loan processor or underwriter
8 except as provided in section 6-991.02.
9 (ii) A person who only performs real estate brokerage activities and
10 who is licensed in accordance with title 32, chapter 20, unless the person is
11 compensated by a lender, a mortgage broker or any other loan originator or by
12 an agent of the lender, mortgage broker or other loan originator.
13 (iii) A person solely involved in extensions of credit relating to a
14 timeshare plan as defined in 11 United States Code section 101(53D).
15 (iv) A person who ~~makes~~ ORIGINATES five or fewer mortgage loans per
16 calendar year IF THE SOURCE OF THE PROSPECTIVE FINANCING ALSO MAKES FIVE OR
17 FEWER MORTGAGE LOANS PER CALENDAR YEAR.
18 (v) A person who takes back a purchase money mortgage in connection
19 with the sale of residential real estate.
20 (vi) An employer making a mortgage loan to an employee.
21 13. "Loan processor or underwriter" means an individual who performs
22 clerical or support duties as an employee at the direction of and subject to
23 the supervision and instruction of a person who is licensed or who is exempt
24 from licensure under article 1 or 2 of this chapter.
25 14. "Mortgage banker" means a person who is licensed pursuant to
26 article 2 of this chapter.
27 15. "Mortgage broker" means a person who is licensed pursuant to
28 article 1 of this chapter.
29 16. "Mortgage loan" or "residential mortgage loan" means a loan for
30 personal family or household use that is secured by a mortgage, deed of trust
31 or other equivalent consensual security interest on a dwelling, as defined in
32 the truth in lending act (15 United States Code section 1602(v)), or
33 residential real estate on which a dwelling is constructed or intended to be
34 constructed.
35 17. "Real estate brokerage activity" means any activity that involves
36 offering or providing real estate brokerage services to the public,
37 including:
38 (a) Acting as a real estate salesperson or real estate broker for a
39 buyer, seller, lessor or lessee of real property.
40 (b) Bringing together parties interested in the sale, purchase, lease,
41 rental or exchange of real property.
42 (c) Negotiating on behalf of any party any portion of a contract
43 relating to the sale, purchase, lease, rental or exchange of real property
44 other than in connection with providing financing with respect to any
45 transaction.

1 (d) Engaging in any activity for which a person is required to be
2 licensed as a real estate salesperson or real estate broker under title 32,
3 chapter 20.

4 (e) Offering to engage in any activity or act in any capacity
5 described in subdivision (a), (b), (c) or (d) of this paragraph.

6 18. "Registered loan originator" means any individual who is both of
7 the following:

8 (a) A loan originator who is registered with and maintains a unique
9 identifier through the nationwide mortgage licensing system and registry
10 established by the secure and fair enforcement for mortgage licensing act of
11 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101
12 through 5116) or its successor.

13 (b) An employee of one of the following:

14 (i) A depository institution.

15 (ii) A subsidiary that is owned and controlled by a depository
16 institution and regulated by a federal banking agency.

17 (iii) An institution regulated by the farm credit administration.

18 19. "Residential mortgage loan servicer" means any person who does
19 either of the following:

20 (a) On behalf of the noteholder, collects or receives payments,
21 including payments of principal, interest, escrow monies and other monies
22 due, on obligations due and owing to the noteholder pursuant to a residential
23 mortgage loan.

24 (b) When the borrower is in default or in foreseeable likelihood of
25 default, works on behalf of the noteholder with the borrower to modify the
26 obligations either temporarily or permanently in order to avoid foreclosure
27 or otherwise to finalize collection through the foreclosure process.

28 20. "Residential real estate" means any property that is located in
29 this state and on which a dwelling is constructed or intended to be
30 constructed.

31 21. "Unique identifier" means the number assigned to the loan
32 originator by the nationwide mortgage licensing system and registry or its
33 successor or as the term is used under the secure and fair enforcement for
34 mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United
35 States Code sections 5101 through 5116).

36 Sec. 3. Section 6-991.05, Arizona Revised Statutes, is amended to
37 read:

38 6-991.05. Denial, suspension or revocation of licenses

39 A. The superintendent may deny a license to a person or suspend or
40 revoke a license if the superintendent finds that an applicant or licensee:

41 1. Is not a person of honesty, truthfulness or good character.

42 ~~2. Does not have the financial responsibility, experience or~~
43 ~~competence to adequately serve the public or to warrant the belief that the~~
44 ~~applicant or licensee will act lawfully, honestly and fairly pursuant to this~~
45 ~~article.~~

46 ~~3.~~ 2. Has violated any law, rule or order.

1 ~~4. Has been convicted of a felony during the seven year period~~
2 ~~immediately preceding the date of the application or any crime of breach of~~
3 ~~trust or dishonesty, fraud or money laundering at any time preceding the date~~
4 ~~of application.~~

5 3. HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A
6 MISDEMEANOR IF IT INVOLVED AN ACT OF FRAUD, DISHONESTY OR BREACH OF TRUST OR
7 MONEY LAUNDERING AT ANY TIME PRECEDING THE DATE OF APPLICATION.

8 ~~5.~~ 4. Has had a final judgment entered against the applicant or
9 licensee in a civil action on grounds of fraud, deceit or misrepresentation,
10 and the conduct on which the judgment is based indicates that it would be
11 contrary to the interest of the public to permit the person to be licensed.

12 ~~6.~~ 5. Has had an administrative agency of this state, the federal
13 government or any other state or territory of the United States enter an
14 order against the applicant or licensee involving fraud, deceit or
15 misrepresentation, and the facts relating to the order indicate that it would
16 be contrary to the interest of the public to permit the person to be
17 licensed.

18 ~~7.~~ 6. Has made a material misstatement or suppressed or withheld
19 information on the application for a license or any document required to be
20 filed with the superintendent.

21 ~~8.~~ 7. Has had a loan originator license, consumer lender license,
22 mortgage broker license or mortgage banker license revoked or denied in this
23 state or any other state.

24 B. THE SUPERINTENDENT SHALL DENY A LICENSE TO A PERSON OR SUSPEND OR
25 REVOKE A LICENSE IF THE SUPERINTENDENT FINDS THAT EITHER OF THE FOLLOWING
26 APPLIES:

27 1. THE APPLICANT OR LICENSEE HAS BEEN CONVICTED OF OR PLED GUILTY OR
28 NOLO CONTENDERE TO A FELONY IN A DOMESTIC, FOREIGN OR MILITARY COURT DURING
29 THE SEVEN YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR AT
30 ANY TIME PRECEDING THE DATE OF APPLICATION IF THE FELONY INVOLVED AN ACT OF
31 FRAUD, DISHONESTY OR A BREACH OF TRUST OR MONEY LAUNDERING.

32 2. THE APPLICANT OR LICENSEE DOES NOT HAVE THE FINANCIAL
33 RESPONSIBILITY, EXPERIENCE OR COMPETENCE TO ADEQUATELY SERVE THE PUBLIC OR TO
34 WARRANT THE BELIEF THAT THE APPLICANT OR LICENSEE WILL ACT LAWFULLY, HONESTLY
35 AND FAIRLY PURSUANT TO THIS ARTICLE.

36 ~~B.~~ C. If a licensee or applicant under this article is indicted or
37 informed against for forgery, embezzlement, obtaining money under false
38 pretenses, extortion, criminal conspiracy to defraud or a similar offense,
39 and a certified copy of the indictment or information or other proper
40 evidence of the indictment or information is filed with the superintendent,
41 the superintendent may suspend the license or refuse to grant a license to an
42 applicant pending trial on the indictment.

S.B. 1014

APPROVED BY THE GOVERNOR MARCH 16, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 16, 2012.