

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1006

AN ACT

AMENDING SECTIONS 6-902, 6-942, 6-971 AND 6-1302, ARIZONA REVISED STATUTES;
RELATING TO MORTGAGE BANKERS, 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. Section 6-902, Arizona Revised Statutes, is amended to
3 read:

4 6-902. Exemptions

5 A. This article does not apply to:

6 1. A person who does business under any other law of this state, or
7 law of any other state while regulated by a state agency of such other state
8 or the United States, relating to banks, savings banks, trust companies,
9 savings and loan associations, profit sharing and pension trusts, credit
10 unions, insurance companies or consumer lenders, or receivership, including
11 directly or indirectly making, negotiating or offering to make or negotiate a
12 mortgage loan if the mortgage transactions are regulated by the other law or
13 are under the jurisdiction of a court. Subsidiaries and service corporations
14 of these institutions shall not be exempt and shall be subject to the
15 provisions of this article unless preempted by federal law.

16 2. A person who makes a mortgage loan:

17 (a) With his own monies.

18 (b) For his own investment.

19 (c) Without intent to resell.

20 (d) And is not engaged in the business of making mortgage loans.

21 3. A person who funds a mortgage loan which has been originated and
22 processed by a licensee, by a mortgage banker licensed in this state or by a
23 person exempt under paragraph 1 of this subsection and who meets all of the
24 following:

25 (a) Does not maintain a place of business in this state in connection
26 with funding mortgage loans.

27 (b) Does not directly or indirectly solicit borrowers in this state
28 for the purpose of making mortgage loans.

29 (c) Does not participate in the negotiation of mortgage loans.

30 4. A person who, as seller of real property, receives one or more
31 mortgages or deeds of trust as security for a purchase money obligation.

32 5. A person who is licensed to practice law in this state, but is not
33 actively and principally engaged in the business of negotiating mortgage
34 loans, if this person renders services in the course of his practice as an
35 attorney at law.

36 6. A person who receives a mortgage or deed of trust on real property
37 as security for an obligation payable on an installment or deferred payment
38 basis and arising out of materials furnished or services rendered in the
39 improvement of that real property or any lien created without the consent of
40 the owner of the real property.

41 7. A person who is licensed pursuant to article 2 or 3 of this
42 chapter.

43 8. An agency of any state or of the United States.

1 9. A nonprofit federally tax exempt corporation certified by the
2 United States small business administration and organized to promote economic
3 development within this state whose primary activity consists of providing
4 financing for business expansion.

5 10. An institutional investor as defined in section 6-971 unless the
6 institutional investor makes a mortgage loan other than a commercial mortgage
7 loan OR A COMMERCIAL BUSINESS PURPOSE LOAN as defined in section 6-971.

8 B. For the purposes of:

9 1. Subsection A, paragraph 3 of this section, "originate" includes
10 loans closed in a name other than that of the licensee, a mortgage banker
11 licensed in this state or AN exempt person only if the person in whose name
12 the loan is closed meets the other requirements of subsection A, paragraph 3
13 of this section.

14 2. Subsection A, paragraph 3, subdivision (c) of this section,
15 "negotiation of mortgage loans" does not include setting the terms under
16 which a person may buy a mortgage loan originated by a licensee or a person
17 exempt under subsection A, paragraph 1 of this section.

18 Sec. 2. Section 6-942, Arizona Revised Statutes, is amended to read:
19 6-942. Exemptions

20 A. This article does not apply to:

21 1. A person who does business under any other law of this state, or
22 any other state while regulated by a state agency of such other state, or of
23 the United States, relating to banks, savings banks, trust companies, savings
24 and loan associations, profit sharing and pension trusts, credit unions,
25 insurance companies or consumer lenders, or receiverships, including directly
26 or indirectly making, negotiating or offering to make or negotiate a mortgage
27 banking loan or a mortgage loan if the mortgage transactions are regulated by
28 the other law or are under the jurisdiction of a court.

29 2. A person who makes a mortgage banking loan or a mortgage loan:

30 (a) With his own monies.

31 (b) For his own investment.

32 (c) Without intent to resell.

33 (d) And is not engaged in the business of making mortgage loans or
34 mortgage banking loans.

35 3. A person who funds a mortgage loan or mortgage banking loan which
36 has been originated and processed by a licensee, by a mortgage broker
37 licensed in this state or by a person exempt under paragraph 1 of this
38 subsection and who meets all of the following:

39 (a) Does not maintain a place of business in this state in connection
40 with funding mortgage loans or mortgage banking loans.

41 (b) Does not directly or indirectly solicit borrowers in this state
42 for the purpose of making mortgage loans.

43 (c) Does not participate in the negotiation of mortgage loans.

1 4. A person who, as seller of real property, receives one or more
2 mortgages or deeds of trust as security for a purchase money obligation.

3 5. A person who is licensed to practice law in this state, but is not
4 actively and principally engaged in the business of negotiating mortgage
5 banking loans or mortgage loans, if this person renders services in the
6 course of his practice as an attorney at law.

7 6. A person who receives a mortgage or deed of trust on real property
8 as security for an obligation payable on an installment or deferred payment
9 basis and arising out of materials furnished or services rendered in the
10 improvement of that real property or any lien created without the consent of
11 the owner of such real property.

12 7. A person who is licensed pursuant to article 1 or 3 of this
13 chapter.

14 8. An agency of any state or of the United States.

15 9. A nonprofit federally tax exempt corporation certified by the
16 United States small business administration and organized to promote economic
17 development within this state whose primary activity consists of providing
18 financing for business expansion.

19 10. An institutional investor as defined in section 6-971 unless the
20 institutional investor makes either:

21 (a) A mortgage loan other than a commercial mortgage loan OR A
22 COMMERCIAL BUSINESS PURPOSE LOAN as defined in section 6-971.

23 (b) A mortgage banking loan other than a commercial mortgage loan OR A
24 COMMERCIAL BUSINESS PURPOSE LOAN as defined in section 6-971.

25 B. Subsidiaries and service corporations of institutions exempt under
26 subsection A, paragraph 1 of this section shall not be exempt and shall be
27 subject to the provisions of this article unless preempted by federal law.

28 C. For the purposes of:

29 1. Subsection A, paragraph 3 of this section, "originate" includes
30 loans closed in a name other than that of the licensee, a mortgage broker
31 licensed in this state or AN exempt person only if the person in whose name
32 the loan is closed meets the other requirements of subsection A, paragraph 3
33 of this section.

34 2. Subsection A, paragraph 3, subdivision (c) of this section,
35 negotiation of mortgage loans does not include setting the terms under which
36 a person may buy a mortgage loan originated by a licensee or a person exempt
37 under subsection A, paragraph 1 of this section.

38 Sec. 3. Section 6-971, Arizona Revised Statutes, is amended to read:
39 6-971. Definitions

40 In this article, unless the context otherwise requires:

41 1. "Affiliate" means an entity that directly or indirectly, through
42 one or more intermediaries, controls, is controlled by or is under common
43 control with the specified entity.

1 2. "COMMERCIAL BUSINESS PURPOSE LOAN" MEANS A LOAN THAT HAS A
2 COMMERCIAL BUSINESS PURPOSE AND THAT MAY BE DIRECTLY OR INDIRECTLY SECURED BY
3 A MORTGAGE, DEED OF TRUST OR ANY LIEN INTEREST ON ANY REAL PROPERTY THAT IS
4 ESTABLISHED WITH THE REAL PROPERTY OWNER'S CONSENT.

5 ~~2-~~ 3. "Commercial mortgage banker" means a person who engages in the
6 following:

7 (a) Originating commercial mortgage loans.

8 (b) Servicing commercial mortgage loans.

9 (c) Either directly or indirectly making, negotiating or offering to
10 make or negotiate commercial mortgage loans.

11 ~~3-~~ 4. "Commercial mortgage loan" means a loan that is directly or
12 indirectly secured by a mortgage or deed of trust or any lien interest on
13 commercial property and created with the consent of the owner of the
14 commercial property.

15 ~~4-~~ 5. "Commercial mortgage loan closing" means the day by which all
16 documents relating to the commercial mortgage loan have been executed and
17 recorded and all monies have been accounted for under the terms of the escrow
18 instructions.

19 ~~5-~~ 6. "Commercial property" means real estate that is located in this
20 state and that is not used for a one to four family residence.

21 ~~6-~~ 7. "Compensation" means anything of value or any benefit including
22 points, commissions, bonuses, referral fees, loan origination fees and other
23 similar fees but excluding periodic interest resulting from the application
24 of the note rate of interest to the outstanding principal balance remaining
25 unpaid from time to time.

26 ~~7-~~ 8. "Institutional investor" means a person who in the regular
27 course of business makes commercial mortgage loans ~~of more than two hundred~~
28 ~~fifty thousand dollars~~ OR COMMERCIAL BUSINESS PURPOSE LOANS that are funded
29 exclusively from the institutional investor's own resources.

30 ~~8-~~ 9. "Investor" means a person who directly or indirectly provides
31 monies to a commercial mortgage banker that are, or are intended to be, used
32 to make a loan, and any person who purchases a loan, or any interest in a
33 loan, from a commercial mortgage banker or in a transaction that has been
34 directly or indirectly arranged or negotiated by a commercial mortgage
35 banker.

36 ~~9-~~ 10. "License" means a license issued under this article.

37 ~~10-~~ 11. "Licensee" means a person who is licensed under this article.

38 ~~11-~~ 12. "Own resources" means any of the following:

39 (a) Cash, corporate capital, warehouse credit lines at commercial
40 banks, savings banks or savings and loan associations or other sources that
41 are liability items on the person's financial statements.

1 (b) Correspondent contracts between the commercial mortgage banker and
2 an institutional investor, bank, savings bank, trust company, savings and
3 loan association, credit union, profit sharing or pension trust, consumer
4 lender or insurance company.

5 (c) The person's affiliates' cash, corporate capital, warehouse credit
6 lines at commercial banks or other sources that are liability items on the
7 affiliates' financial statements for which the affiliates' assets are
8 pledged.

9 ~~12-~~ 13. "Servicing commercial mortgage loans" means collecting
10 payments at a location in this state on commercial mortgage loans, including:

11 (a) Principal.

12 (b) Interest.

13 (c) Trust items such as hazard insurance premiums, taxes and various
14 reserves on an obligation under the terms of the obligation.

15 (d) Operational procedures covering accounting, bookkeeping,
16 insurance, tax records, loan payment follow-up, delinquency loan follow-up,
17 loan analysis and property valuation.

18 Sec. 4. Section 6-1302, Arizona Revised Statutes, is amended to read:

19 ~~6-1302.~~ Scope of chapter; exemptions

20 A. Any person who acts as an advance fee loan broker shall register
21 with the superintendent as provided in this chapter. A person who is not
22 exempt under subsection B of this section and who advertises for, solicits or
23 purports to be willing to make or procure a loan or extension of credit for
24 an advance fee is presumed to be engaged in the business of an advance fee
25 loan broker.

26 B. This chapter does not apply to:

27 1. Individuals not regularly engaged in the business of making or
28 procuring loans or extensions of credit for an advance fee.

29 2. A person doing business as permitted by any law of any state or of
30 the United States relating to banks, savings banks, trust companies, savings
31 and loan associations, credit unions, insurance companies, consumer lenders
32 or profit sharing and pension trusts.

33 3. A person licensed as a mortgage broker, a mortgage banker or a
34 commercial mortgage banker pursuant to chapter 9 of this title.

35 4. A person who makes a loan with the person's own money or for the
36 person's own investment.

37 5. A person licensed as a real estate broker or salesperson pursuant
38 to title 32, chapter 20, article 2.

39 6. A person who is licensed to practice law in this state but who is
40 not actively and principally engaged in the business of making or procuring
41 loans or extensions of credit, if this person renders services in the course
42 of the person's practice as an attorney.

- 1 7. An institutional investor as defined in section 6-971 unless the
- 2 institutional investor advertises for, solicits or holds himself out as
- 3 willing to make or procure for an advance fee a loan or extension of credit
- 4 other than a commercial mortgage loan **OR A COMMERCIAL BUSINESS PURPOSE LOAN**
- 5 as defined in section 6-971.
- 6 8. This state including any political subdivision of this state.
- 7 9. The United States or any department or agency of the United States.