House Engrossed Senate Bill
mortgage brokers; bankers; qualifications

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 172
SENATE BILL 1204

AN ACT
AMENDING SECTION 6-901, ARIZONA REVISED STATUTES; AMENDING TITLE 6,
CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION
6-902.01; AMENDING SECTIONS 6-903, 6-941, 6-971 AND 6-976, ARIZONA REVISED
STATUTES; RELATING TO MORTGAGE BROKER AND BANKER LICENSING.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 6-901, Arizona Revised Statutes, is amended to read:

6-901. Definitions
In this article, unless the context otherwise requires:
1. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified.
2. "Commercial mortgage broker" means a person who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a commercial mortgage loan.
3. "Commercial mortgage loan" means a loan that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on commercial property and that is created with the consent of the owner of the commercial property.
4. "Commercial property" means real property that is not a residential dwelling of one to four units.
5. "Compensation" means anything of value or any benefit, including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time.
6. "Continuing education unit" means a fifty minute period of time in a continuing education course that relates to the mortgage industry or to mortgage transactions, including courses taken to maintain recognized industry designations.
7. "GENERALLY ACCEPTED ACCOUNTING PRINCIPLES" MEANS UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE FINANCIAL ACCOUNTING STANDARDS BOARD OR THE INTERNATIONAL FINANCIAL REPORTING STANDARDS ISSUED BY THE INTERNATIONAL ACCOUNTING STANDARDS BOARD.
8. "Investor" means a person who lends or invests money in mortgage loans.
9. "License" means a license issued under this article.
10. "Licensee" means a person licensed under this article.
11. "Loan originator" has the same meaning prescribed in section 6-991.
12. "Mortgage broker" means a person who is not exempt under section 6-902 and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.
13. "Mortgage loan" means a loan secured by a mortgage or deed of trust or any lien interest on real estate located in this state created with the consent of the owner of the real estate.
14. "Mortgage loan closing" means the day by which all documents relating to the mortgage loan have been executed and recorded.
and all monies have been accounted for under the terms of the escrow instructions.

**14.** "Residential mortgage loan" means a mortgage loan that has security in the form of a residential dwelling of one to four units.

Sec. 2. Title 6, chapter 9, article 1, Arizona Revised Statutes, is amended by adding section 6-902.01, to read:

6-902.01. Exemption; responsible individual

A. A PARENT COMPANY MAY APPLY FOR AND BE GRANTED A CERTIFICATE OF EXEMPTION ON BEHALF OF AN ENTITY THAT ALLOWS A RESPONSIBLE INDIVIDUAL, AS PRESCRIBED IN SECTION 6-903, SUBSECTION H, TO RESIDE OUT OF STATE IF THE RESPONSIBLE INDIVIDUAL MEETS THE FOLLOWING CRITERIA:

1. IS A NATURAL PERSON.
2. MEETS ALL OF THE REQUIREMENTS PURSUANT TO THIS ARTICLE.
3. RECEIVES NOTIFICATION FROM THE PARENT COMPANY THAT THE PARENT COMPANY WAS GRANTED A CERTIFICATE OF EXEMPTION BY THE DIRECTOR.

B. THE PARENT COMPANY MUST APPLY ON BEHALF OF THE ENTITY AND SUBMIT AN ATTESTATION FORM AS PRESCRIBED BY THE DIRECTOR THAT THE PARENT COMPANY MEETS ALL OF THE FOLLOWING REQUIREMENTS:

1. MAINTAINS A PHYSICAL PRESENCE IN THIS STATE.
2. DOES NOT HAVE ANY DISCIPLINARY ACTIONS BY THE DEPARTMENT.
3. HAS A CLASS OF SECURITIES REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.

C. THE APPLICANT SHALL PAY ALL APPLICABLE FEES AS PRESCRIBED IN RULE.

D. THE DIRECTOR MAY REVOKE THE CERTIFICATE IF THE DIRECTOR FINDS EITHER OF THE FOLLOWING:

1. THE INTERESTS OF THE CONSUMER ARE NOT MET.
2. THE REQUIREMENTS OF THE RESPONSIBLE INDIVIDUAL PRESCRIBED BY THIS SECTION ARE NOT MET.

E. THE DURATION OF THE CERTIFICATE OF EXEMPTION IS CONTINUOUS DURING THE LICENSE PERIOD UNLESS THE CERTIFICATE OF EXEMPTION IS REVOKED PURSUANT TO THIS SECTION.

F. IF THE DIRECTOR DENIES THE APPLICATION FOR OR REVOKES A CERTIFICATE OF EXEMPTION, THE DIRECTOR SHALL ISSUE AN ORDER OUTLINING THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND REASONS FOR THE DENIAL OR REVOCATION. THE APPLICANT HAS A RIGHT TO A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

G. THE DIRECTOR MAY PRESCRIBE RULES TO CARRY OUT THIS SECTION.

Sec. 3. Section 6-903, Arizona Revised Statutes, is amended to read:

6-903. Licensing of mortgage brokers required; qualifications; application; bond; fees; renewal

A. A person shall not act as a mortgage broker if the person is not licensed under this article. A person who brokers only commercial mortgage loans shall obtain either a mortgage broker license or a
commercial mortgage broker license. A person who brokers residential mortgage loans shall obtain a mortgage broker license.

B. The deputy director shall not grant a mortgage broker's license or a commercial mortgage broker's license to a person, other than a natural person, who is not registered to do business in this state on the date of granting the license.

C. An applicant for an original mortgage broker's license shall:
   1. Have not less than three years' experience as a mortgage broker or loan originator or equivalent lending experience in a related business during the five years immediately preceding the time of application.
   2. Have satisfactorily completed a course of study approved by the deputy director during the three years immediately preceding the time of application.
   3. Have passed a mortgage broker's test, pursuant to section 6-908.

D. An applicant for an original commercial mortgage broker's license shall:
   1. Have not less than three years' experience in the commercial mortgage broker business or equivalent lending experience in a related business during the five years immediately preceding the time of application.
   2. Have made in the past or intend to make or negotiate or offer to make or negotiate commercial mortgage loans.
   3. Provide the deputy director with the following:
      (a) A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.
      (b) If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.
      (c) Notes to the financial statement if applicable.

E. Notwithstanding subsection D, paragraph 3 of this section, commercial mortgage broker licensees and commercial mortgage broker license applicants whose own resources are derived exclusively from correspondent contracts with institutional investors shall provide the deputy director with a current financial statement or that of its parent company prepared according to generally accepted accounting principles, including:
   1. A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.
   2. If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.
   3. Notes to the financial statement if applicable.
F. A person shall make an application APPLY for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the deputy director. The deputy director may require additional information on the experience, background, honesty, truthfulness, integrity and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the deputy director may require information as to the honesty, truthfulness, integrity and competency of any officer, director, shareholder or other interested party of the association, corporation or group.

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

H. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage business if one officer, director, member, partner, employee or trustee of the person OR AN EMPLOYEE OF AN AFFILIATED ENTITY OR THE PARENT COMPANY OF THE LICENSEE is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under the provisions of this article. For the purposes of this subsection, an employee does not include an independent contractor. A THE responsible individual shall be a resident of this state UNLESS THE DIRECTOR GRANTS AN EXEMPTION PURSUANT TO SECTION 6-902.01, shall be in active management of the activities of the licensee governed by this article and shall meet the qualifications set forth in subsection C or D of this section for a licensee.

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

J. Every person licensed as a mortgage broker or a commercial mortgage broker shall deposit with the deputy director, before doing business as a mortgage broker or a commercial mortgage broker, a bond
executed by the licensee as principal and a surety company authorized to
do business in this state as surety. The bond shall be conditioned on the
faithful compliance of the licensee, including the licensee's directors,
officers, members, partners, trustees and employees, with this
article. The bond is payable to any person injured by the wrongful act,
default, fraud or misrepresentation of the licensee or the licensee's
employees and to this state for the benefit of the person injured. Only
one bond is required for any person, firm, association or corporation
irrespective of the number of officers, directors, members, partners or
trustees who are employed by or are members of such firm, association or
corporation. A suit may NOT be commenced on the bond after the
expiration of one year following the commission of the act on which the
suit is based, except that claims for fraud or mistake are limited to the
limitation period provided in section 12-543, paragraph 3. If an injured
person commences an action for a judgment to collect from the bond, the
injured person shall notify the deputy director of the action in writing
at the time of the commencement of the action and shall provide copies of
all documents relating to the action to the deputy director on request.

K. The bond required by this section shall be $10,000 for
licensees whose investors are limited solely to institutional
investors, and $15,000 for licensees whose investors include any
noninstitutional investors.

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

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

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

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

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

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

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

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

1. The date of substitution of a bond for a cash alternative.
2. The surrender of the license.
3. The revocation of the license.
4. The expiration of the license.

P. A licensee or an employee of the licensee shall not advertise for or solicit mortgage business in any manner without using the name and license number as issued on the mortgage broker's principal place of business license, except that a licensee may employ or refer to the commonly used name and any trademarks or service marks of any affiliate. If a license is issued in the name of a natural person, nothing in the advertising or solicitation may imply the license is in the name of another person or entity. For the purposes of this subsection, "advertise" does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan may be obtained.
Q. A licensee shall not employ any person unless the licensee:
1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.
2. Keeps a record of the investigation for not less than two years after termination.

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

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

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

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

V. If the applicant for renewal of a mortgage broker license is a natural person, the applicant shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. If the applicant is other than a natural person, the designated responsible individual shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. An applicant for renewal of a commercial mortgage broker license is not subject to the continuing education requirements prescribed by this article.

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

Sec. 4. Section 6-941, Arizona Revised Statutes, is amended to read:

6-941. Definitions
In this article, unless the context otherwise requires:
1. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified.
2. "Compensation" means anything of value or any benefit including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the
application of the note rate of interest to the outstanding principal
balance remaining unpaid from time to time.

3. “GENERALLY ACCEPTED ACCOUNTING PRINCIPLES” MEANS UNITED STATES
GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE FINANCIAL
ACCOUNTING STANDARDS BOARD OR THE INTERNATIONAL FINANCIAL REPORTING
STANDARDS ISSUED BY THE INTERNATIONAL ACCOUNTING STANDARDS BOARD.

4. “License” means a license issued under this article.

5. “Licensee” means a person licensed under this article.

6. “Mortgage banker” means a person who is not exempt under
section 6-942 and who for compensation or in the expectation of
compensation either directly or indirectly makes, negotiates or offers to
make or negotiate a mortgage banking loan or a mortgage loan.

7. “Mortgage banking loan” means a loan which is funded
exclusively from the mortgage banker's own resources, which is directly or
indirectly secured by a mortgage or deed of trust or any lien interest on
real estate located in this state and which is created with the consent of
the owner of the real property. For the purposes of this paragraph, "own
resources" means any of the following:

(a) Cash, corporate capital, warehouse credit lines at commercial
banks, savings banks or savings and loan associations or other sources
that are liability items on the mortgage banker's financial statements for
which its assets are pledged.

(b) Correspondent contracts between the mortgage banker and a bank,
savings bank, trust company, savings and loan association, credit union,
profit sharing or pension trust, consumer lender or insurance company.

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

8. “Mortgage banking loan closing” means the day by which all
documents relating to the mortgage banking loan or mortgage loan have been
executed and recorded and all monies have been accounted for.

9. “Mortgage loan” means any loan, other than a mortgage
banking loan, secured by a mortgage or deed of trust or any lien interest
on real estate located in this state and created with the consent of the
owner of the real estate.”

Sec. 5. Section 6-971, Arizona Revised Statutes, is amended to
read:

6-971. Definitions

In this article, unless the context otherwise requires:

1. “Affiliate” means an entity that directly or indirectly, through
one or more intermediaries, controls, is controlled by or is under common
control with the specified entity.
2. "Commercial mortgage banker" means a person who engages in the following:
   (a) Originating commercial mortgage loans.
   (b) Servicing commercial mortgage loans.
   (c) Either directly or indirectly making, negotiating or offering to make or negotiate commercial mortgage loans.

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

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

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

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

7. "GENERALLY ACCEPTED ACCOUNTING PRINCIPLES" MEANS UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE FINANCIAL ACCOUNTING STANDARDS BOARD OR THE INTERNATIONAL FINANCIAL REPORTING STANDARDS ISSUED BY THE INTERNATIONAL ACCOUNTING STANDARDS BOARD.

8. "Institutional investor" means a person who in the regular course of business makes commercial mortgage loans of more than two hundred fifty thousand dollars that are funded exclusively from the institutional investor's own resources.

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

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

11. "Licensee" means a person who is licensed under this article.

12. "Own resources" means any of the following:
   (a) Cash, corporate capital, warehouse credit lines at commercial banks, savings banks or savings and loan associations or other sources that are liability items on the person's financial statements.
(b) Correspondent contracts between the commercial mortgage banker and an institutional investor, bank, savings bank, trust company, savings and loan association, credit union, profit sharing or pension trust, consumer lender or insurance company.

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

13. “Servicing commercial mortgage loans” means collecting payments at a location in this state on commercial mortgage loans, including:

(a) Principal.
(b) Interest.
(c) Trust items such as hazard insurance premiums, taxes and various reserves on an obligation under the terms of the obligation.
(d) Operational procedures covering accounting, bookkeeping, insurance, tax records, loan payment follow-up, delinquency loan follow-up, loan analysis and property valuation.

Sec. 6. Section 6-976, Arizona Revised Statutes, is amended to read:

6-976. Responsible individual; employees

A. A license entitles the licensee and all officers, directors, members, partners, trustees and employees of the licensee to engage in commercial mortgage banking if one officer, director, member, partner, employee or trustee of the person OR AN EMPLOYEE OF AN AFFILIATED ENTITY OR THE PARENT COMPANY OF THE LICENSEE is designated in the license as the individual responsible for the licensee under this article. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under this article. For THE purposes of this subsection, employee does not include an independent contractor.

B. A THE responsible individual shall be a resident of this state, shall be active in managing the activities of the licensee governed by this article and shall meet the qualifications prescribed by section 6-973, subsection D, paragraph 1 for a licensee. A licensee shall notify the deputy director that its responsible individual will cease to be active in managing the activities of the licensee within ten days AFTER learning of that fact. Within ninety days after the notification is received by the deputy director, the licensee shall replace the responsible individual with a qualified replacement and notify the deputy director. If the license is not placed under active management of a qualified responsible individual and if notice is not given to the deputy director within the ninety-day period, the license of the licensee expires.
C. A licensee shall not employ any person unless the licensee:
1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.
2. Keeps a record of the investigation for at least two years after termination.
D. The licensee is liable for any damages caused by any employee while acting as an employee of the licensee.

APPROVED BY THE GOVERNOR APRIL 22, 2022.