

Senate Engrossed

mortgage brokers; bankers; qualifications

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

SENATE BILL 1204

AN ACT

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

(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,
3 is amended by adding section 6-902.01, to read:

4 6-902.01. Exemption; responsible individual

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

9 1. IS A NATURAL PERSON.

10 2. MEETS ALL OF THE REQUIREMENTS PURSUANT TO THIS ARTICLE.

11 3. RECEIVES NOTIFICATION FROM THE PARENT COMPANY THAT THE PARENT
12 COMPANY WAS GRANTED A CERTIFICATE OF EXEMPTION BY THE DIRECTOR.

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

16 1. MAINTAINS A PHYSICAL PRESENCE IN THIS STATE.

17 2. DOES NOT HAVE ANY DISCIPLINARY ACTIONS BY THE DEPARTMENT.

18 3. HAS A CLASS OF SECURITIES REGISTERED WITH THE UNITED STATES
19 SECURITIES AND EXCHANGE COMMISSION.

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

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

24 1. THE INTERESTS OF THE CONSUMER ARE NOT MET.

25 2. THE REQUIREMENTS OF THE RESPONSIBLE INDIVIDUAL PRESCRIBED BY
26 THIS SECTION ARE NOT MET.

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

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

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

36 Sec. 2. Section 6-903, Arizona Revised Statutes, is amended to
37 read:

38 6-903. Licensing of mortgage brokers required;
39 qualifications; application; bond; fees; renewal

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

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

5 C. An applicant for an original mortgage broker's license shall:

6 1. Have not less than three years' experience as a mortgage broker
7 or loan originator or equivalent lending experience in a related business
8 during the five years immediately preceding the time of application.

9 2. Have satisfactorily completed a course of study approved by the
10 deputy director during the three years immediately preceding the time of
11 application.

12 3. Have passed a mortgage broker's test, pursuant to section 6-908.

13 D. An applicant for an original commercial mortgage broker's
14 license shall:

15 1. Have not less than three years' experience in the commercial
16 mortgage broker business or equivalent lending experience in a related
17 business during the five years immediately preceding the time of
18 application.

19 2. Have made in the past or intend to make or negotiate or offer to
20 make or negotiate commercial mortgage loans.

21 3. Provide the deputy director with the following:

22 (a) A balance sheet prepared within the immediately preceding six
23 months and certified by the licensee. The deputy director may require a
24 more recent balance sheet.

25 (b) If the applicant has begun operations, a statement of
26 operations and retained earnings and a statement of changes in financial
27 position.

28 (c) Notes to the financial statement if applicable.

29 E. Notwithstanding subsection D, paragraph 3 of this section,
30 commercial mortgage broker licensees and commercial mortgage broker
31 license applicants whose own resources are derived exclusively from
32 correspondent contracts with institutional investors shall provide the
33 deputy director with a current financial statement or that of its parent
34 company prepared according to generally accepted accounting principles,
35 including:

36 1. A balance sheet prepared within the immediately preceding six
37 months and certified by the licensee. The deputy director may require a
38 more recent balance sheet.

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

41 3. Notes to the financial statement if applicable.

42 F. A person shall ~~make an application~~ APPLY for a license or for a
43 renewal of a license in writing on the forms, in the manner and
44 accompanied by the information prescribed by the deputy director. The
45 deputy director may require additional information on the experience,

1 background, honesty, truthfulness, integrity and competency of the
2 applicant and any responsible individual designated by the applicant. If
3 the applicant is a person other than a natural person, the deputy director
4 may require information as to the honesty, truthfulness, integrity and
5 competency of any officer, director, shareholder or other interested party
6 of the association, corporation or group.

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

12 H. If a licensee is a person other than a natural person, the
13 license issued to it entitles all officers, directors, members, partners,
14 trustees and employees of the licensed corporation, partnership,
15 association or trust to engage in the mortgage business if one officer,
16 director, member, partner, employee or trustee of the person is designated
17 in the license as the individual responsible for the person under this
18 article. If a licensee is a natural person, the license entitles all
19 employees of the licensee to engage in the mortgage business. If the
20 natural person is not a resident of this state, an employee of the
21 licensee OR AN EMPLOYEE OF AN AFFILIATED ENTITY OR THE PARENT COMPANY OF
22 THE LICENSEE shall be designated in the license as the individual
23 responsible for the licensee under ~~the provisions of~~ this article. For
24 the purposes of this subsection, an employee does not include an
25 independent contractor. ~~A~~ THE responsible individual shall be a resident
26 of this state UNLESS THE DIRECTOR GRANTS AN EXEMPTION PURSUANT TO SECTION
27 6-902.01, shall be in active management of the activities of the licensee
28 governed by this article and shall meet the qualifications set forth in
29 subsection C or D of this section for a licensee.

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

39 J. Every person licensed as a mortgage broker or a commercial
40 mortgage broker shall deposit with the deputy director, before doing
41 business as a mortgage broker or a commercial mortgage broker, a bond
42 executed by the licensee as principal and a surety company authorized to
43 do business in this state as surety. The bond shall be conditioned on the
44 faithful compliance of the licensee, including the licensee's directors,
45 officers, members, partners, trustees and employees, with this

1 article. The bond is payable to any person injured by the wrongful act,
 2 default, fraud or misrepresentation of the licensee or the licensee's
 3 employees and to this state for the benefit of the person injured. Only
 4 one bond is required for any person, firm, association or corporation
 5 irrespective of the number of officers, directors, members, partners or
 6 trustees who are employed by or are members of such firm, association or
 7 corporation. ~~No~~ A suit may NOT be commenced on the bond after the
 8 expiration of one year following the commission of the act on which the
 9 suit is based, except that claims for fraud or mistake are limited to the
 10 limitation period provided in section 12-543, paragraph 3. If an injured
 11 person commences an action for a judgment to collect from the bond, the
 12 injured person shall notify the deputy director of the action in writing
 13 at the time of the commencement of the action and shall provide copies of
 14 all documents relating to the action to the deputy director on request.

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

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

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

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

31 M. Notwithstanding section 35-155, in lieu of the bond described in
 32 this section, an applicant for a license or a licensee may deposit with
 33 the deputy director a deposit in the form of cash or alternatives to cash
 34 in the same amount as the bond required under subsection J of this
 35 section. The deputy director may accept any of the following as an
 36 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
 39 banks doing business in this state and fully insured by the federal
 40 deposit insurance corporation or any successor institution.

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

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

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

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

- 23 1. The date of substitution of a bond for a cash alternative.
- 24 2. The surrender of the license.
- 25 3. The revocation of the license.
- 26 4. The expiration of the license.

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

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

- 40 1. Conducts a reasonable investigation of the background, honesty,
41 truthfulness, integrity and competency of the employee before hiring.
- 42 2. Keeps a record of the investigation for not less than two years
43 after termination.

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

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

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

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

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

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

31 Sec. 3. Section 6-976, Arizona Revised Statutes, is amended to
32 read:

33 6-976. Responsible individual; employees

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

1 B. ~~★ THE~~ responsible individual ~~shall be a resident of this state,~~
2 shall be active in managing the activities of the licensee governed by
3 this article and shall meet the qualifications prescribed by section
4 6-973, subsection D, paragraph 1 for a licensee. A licensee shall notify
5 the deputy director that its responsible individual will cease to be
6 active in managing the activities of the licensee within ten days ~~of~~ AFTER
7 learning of that fact. Within ninety days after the notification is
8 received by the deputy director, the licensee shall replace the
9 responsible individual with a qualified replacement and notify the deputy
10 director. If the license is not placed under active management of a
11 qualified responsible individual and if notice is not given to the deputy
12 director within the ninety-day period, the license of the licensee
13 expires.

14 C. A licensee shall not employ any person unless the licensee:
15 1. Conducts a reasonable investigation of the background, honesty,
16 truthfulness, integrity and competency of the employee before hiring.
17 2. Keeps a record of the investigation for at least two years after
18 termination.

19 D. The licensee is liable for any damages caused by any employee
20 while acting as an employee of the licensee.