

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 740

An Act to amend and reenact §§ 6.2-1700, 6.2-1701, 6.2-1706, 6.2-1707, 6.2-1708, and 6.2-1712.1 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 6.2-1701.3, and to repeal § 6.2-1701.2 of the Code of Virginia, relating to the licensing of mortgage loan originators.

[H 2251]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1700, 6.2-1701, 6.2-1706, 6.2-1707, 6.2-1708, and 6.2-1712.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-1701.3 as follows:

§ 6.2-1700. Definitions.

As used in this chapter:

"Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act, Title V (§ 1501 et seq.) of the Housing and Economic Recovery Act of 2008, P.L. 110-289.

"Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan in the mortgage industry and communication with the consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

"Covered financial institution" has the same meaning as that term is defined in 12 C.F.R. § 1007.102.

"Dwelling" means a residential structure or mobile home that contains one to four family housing units, or individual units of condominiums or cooperatives.

"Employee" means an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"Licensee" means an individual licensed under this chapter, ~~including an individual who has been issued a transitional mortgage loan originator license.~~

"Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or a registered mortgage loan originator. For the purposes of this definition, clerical or support duties include (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

"Mortgage loan originator" means an individual who (i) takes an application for or offers or negotiates the terms of a residential mortgage loan in which the dwelling is or will be located in the Commonwealth or (ii) represents to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities described in clause (i).

"Nationwide ~~Mortgage~~ Multistate Licensing System and Registry" or "Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

"Real estate brokerage activities" means any activity that involves offering or providing real estate brokerage services to the public, including (i) acting as a real estate broker, real estate agent, or real estate salesperson for a buyer, seller, lessor, or lessee of real property; (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction; (iv) engaging in any activity for which a person is required to be licensed or registered as a real estate broker, real estate agent, or real estate salesperson; and (v) offering to engage in any activity or act in any capacity described in clauses (i) through (iv).

"Registered mortgage loan originator" means any individual who (i) takes an application for or offers

or negotiates the terms of a residential mortgage loan in which the dwelling is or will be located in the Commonwealth, (ii) is an employee of a covered financial institution, and (iii) is registered with, and maintains a unique identifier through, the Registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Transitional mortgage loan originator license" means a license issued under this chapter to engage in business as a mortgage loan originator for a period of no more than 120 days, during which time the individual may fulfill the pre-licensing education and written test requirements described in §§ 6.2-1708 and 6.2-1709 and apply for a mortgage loan originator license.

"Unique identifier" means a number or other identifier assigned by protocols established by the Registry that permanently identifies a mortgage loan originator.

§ 6.2-1701. License requirement.

A. Except as otherwise provided in § ~~6.2-1701.2~~ 6.2-1701.3, no individual shall engage in the business of a mortgage loan originator unless such individual has first obtained and maintains annually a license under this chapter.

B. The following shall be exempt from licensing and other provisions of this chapter:

1. Any individual engaged solely as a loan processor or underwriter. Except as otherwise provided in this subsection, an individual acting as an independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such individual has first obtained and maintains annually a mortgage loan originator license;

2. Any individual who only performs administrative or clerical tasks on behalf of a mortgage loan originator;

3. Any individual who only performs real estate brokerage activities and is licensed or registered in accordance with applicable law, unless the individual is compensated directly or indirectly by the lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

4. Any individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101 (53D);

5. A registered mortgage loan originator;

6. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

7. Any individual who acts as a loan originator in providing financing for the sale of that individual's own residence;

8. A licensed attorney, provided that the attorney's mortgage loan origination activities are: (i) considered by the Supreme Court of Virginia to be part of the authorized practice of law within the Commonwealth, (ii) carried out within an attorney-client relationship, and (iii) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards;

9. Any employee of federal, state, or local government, or a housing finance agency, who acts as a mortgage loan originator only pursuant to his official duties of employment. For the purposes of this subdivision, "local government" means any county, city, or town or other local or regional political subdivision; and

10. Any employee of a bona fide nonprofit organization, as determined by the Commission in accordance with § 6.2-1701.1, who acts as a mortgage loan originator only (i) pursuant to his official duties of employment and (ii) with respect to residential mortgage loans with terms that are favorable to a borrower.

§ 6.2-1701.3. Temporary authority to act as a mortgage loan originator.

A. *An individual shall be deemed to have temporary authority to act as a mortgage loan originator in the Commonwealth to the extent authorized by, and subject to the terms and conditions prescribed in, § 1518 of the Act.*

B. *A mortgage lender or mortgage broker that employs an individual who is deemed to have temporary authority to act as a mortgage loan originator in the Commonwealth pursuant to this section shall be subject to the requirements of this chapter and Chapter 16 (§ 6.2-1600 et seq.) to the same extent that such mortgage lender or mortgage broker would be subject to such requirements if such individual were a licensed mortgage loan originator under this chapter.*

C. *An individual who is deemed to have temporary authority to act as a mortgage loan originator in the Commonwealth pursuant to this section and acts as a mortgage loan originator shall be subject to the requirements of this chapter to the same extent as if such individual was a licensed mortgage loan originator under this chapter.*

§ 6.2-1706. Qualifications.

Upon the filing and investigation of an application for a license, ~~including an application for a transitional mortgage loan originator license~~, and compliance by the applicant with all applicable provisions of this chapter, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter if it finds that the financial responsibility, character, and general

fitness of the applicant are such as to warrant belief that the licensee will act as a mortgage loan originator efficiently and fairly, in the public interest, and in accordance with law. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial. The Commission shall not base a license denial, in whole or in part, on an applicant's credit score, nor shall it use a credit report as the sole basis for license denial.

§ 6.2-1707. Other conditions for mortgage loan originator licensing.

~~A.~~ In addition to the findings required by § 6.2-1706, the Commission shall not issue a mortgage loan originator license unless it finds that:

1. The applicant has never had a mortgage loan originator license revoked by any governmental authority;

2. The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the application for licensing and registration; or (ii) at any time preceding such date of application if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

3. The applicant has completed the pre-licensing education requirement described in § 6.2-1708;

4. The applicant has passed a written test that meets the test requirement described in § 6.2-1709; and

5. The applicant has become registered through, and obtained a unique identifier from, the Registry.

~~B. In addition to the findings required by § 6.2-1706, the Commission shall not issue a transitional mortgage loan originator license unless it (i) makes the findings set forth in subdivisions A 1, A 2, and A 5 and (ii) finds that the applicant is employed by a person licensed under Chapter 16 (§ 6.2-1600 et seq.).~~

§ 6.2-1708. Pre-licensing education of mortgage loan originators.

A. In order to meet the pre-licensing education requirement referred to in subdivision 3 of § 6.2-1707, an applicant shall complete at least 20 hours of pre-licensing education courses, approved in accordance with subsection B, which shall include at least (i) three hours of federal law and regulations; (ii) three hours of ethics, which shall include instruction about fraud, consumer protection, and fair lending issues; and (iii) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

B. Pre-licensing education courses shall be reviewed and approved by the Registry based upon reasonable standards. Review and approval of a course shall include review and approval of the course provider.

C. Nothing in this section shall preclude the provision of any pre-licensing education course that has been approved by the Registry by: (i) the employer of the applicant; (ii) an entity that is affiliated with the applicant by any agency contract; or (iii) a subsidiary or affiliate of such employer or entity.

D. Pre-licensing education courses may be offered in a classroom, online, or by any other means approved by the Registry.

E. Except as otherwise provided by the Commission, pre-licensing education courses shall be subject to such expiration rules as may be established by the Registry. Expired courses shall not count toward the minimum number of hours of pre-licensing education required by subsection A.

§ 6.2-1712.1. Inactive mortgage loan originator licenses.

A. Notwithstanding any other provision of this chapter, if the Commission finds that an individual has applied for a mortgage loan originator license and meets all applicable requirements for licensure except § 6.2-1703, then the Commission shall issue a mortgage loan originator license to the applicant. However, the license issued by the Commission shall be inactive by operation of law until the Commission has updated the licensee's status in the Registry pursuant to subsection D.

B. Notwithstanding any other provision of this chapter, if the Commission finds that an individual has requested renewal of his mortgage loan originator license in accordance with subsection C of § 6.2-1711 and meets all applicable requirements for license renewal except § 6.2-1703, then the Commission shall renew the individual's mortgage loan originator license. However, the license renewed by the Commission shall be inactive by operation of law until the Commission has updated the licensee's status in the Registry pursuant to subsection D.

C. If at any time a licensee ceases to be covered by a surety bond meeting the requirements of § 6.2-1703, then the individual's license shall be inactive by operation of law until the Commission has updated the licensee's status in the Registry pursuant to subsection D.

D. If a licensee's mortgage loan originator license ~~or transitional mortgage loan originator license~~ is inactive by operation of law pursuant to this section, then the licensee shall not engage in the business of a mortgage loan originator until (i) the Commission has determined that the licensee is covered by a surety bond meeting the requirements of § 6.2-1703 and (ii) based upon its determination, the Commission has updated the licensee's status in the Registry to indicate that the licensee may engage in the business of a mortgage loan originator.

2. That § 6.2-1701.2 of the Code of Virginia is repealed.