

House Bill 1385

By: Representatives Fludd of the 48th, Post 4, Sailor of the 61st, Post 1, Ehrhart of the 28th, Sinkfield of the 50th, and Stoner of the 34th, Post 1

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated,
2 relating to licensing of mortgage lenders and mortgage brokers, so as to provide for
3 authorization of mortgage loan officers; to provide for a definition; to provide for an
4 exemption; to provide for department regulations relating to education and experience
5 requirements for loan officers; to provide for other matters relative to the foregoing; to
6 provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
10 licensing of mortgage lenders and mortgage brokers, is amended by striking Code Section
11 7-1-1000, relating to definitions, and inserting in lieu thereof a new Code Section 7-1-1000
12 to read as follows:

13 "7-1-1000.

14 As used in this article, the term:

15 (1) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified
16 person, a person who directly, indirectly, or through one or more intermediaries controls,
17 is controlled by, or is under common control with the person specified. Any beneficial
18 owner of 20 percent or more of the combined voting power of all classes of voting
19 securities of a person or any executive officer, director, trustee, joint venturer, or general
20 partner of a person is an affiliate of such person unless the shareholder, executive officer,
21 director, trustee, joint venturer, or general partner shall prove that he or she in fact does
22 not control, is not controlled by, or is not under common control with such person.

23 (2) 'Audited financial statement' means the product of the examination of financial
24 statements in accordance with generally accepted auditing standards by an independent
25 certified public accountant or by an independent Georgia registered public accountant
26 considered acceptable by the department, which product consists of an opinion on the

1 financial statements indicating their conformity with generally accepted accounting
2 principles.

3 (3) 'Commitment' or 'commitment agreement' means a statement by a lender required to
4 be licensed or registered under this article that sets forth the terms and conditions upon
5 which the lender is willing to make a particular mortgage loan to a particular borrower.

6 (4) 'Control,' including 'controlling,' 'controlled by,' and 'under common control with,'
7 means the direct or indirect possession of the power to direct or cause the direction of the
8 management and policies of a person, whether through the ownership of voting securities,
9 by contract, or otherwise.

10 (5) 'Executive officer' means the chief executive officer, the president, the principal
11 financial officer, the principal operating officer, each vice president with responsibility
12 involving policy-making functions for a significant aspect of a person's business, the
13 secretary, the treasurer, or any other person performing similar managerial or supervisory
14 functions with respect to any organization whether incorporated or unincorporated.

15 (6) 'Extortionate means' means the use or the threat of violence or other criminal means
16 to cause harm to the person, reputation of the person, or property of the person.

17 (6.1) 'Georgia Residential Mortgage Act' means this article.

18 (7) 'License' means a license issued by the department under this article to act as a
19 mortgage lender or mortgage broker.

20 (7.1) 'Loan officer' means a person who acts as an employee and not as an independent
21 contractor to assist a licensee in performing one or more of the following activities to or
22 for a consumer: accepting or offering to accept a mortgage loan application, soliciting
23 a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage
24 loan commitments or interest rate guarantee agreements, or advising on any aspect of a
25 mortgage loan transaction, whether such acts are done through contact by telephone, by
26 electronic means, by mail, or in person with consumers.

27 (8) 'Lock-in agreement' means a written agreement whereby a lender or a broker required
28 to be licensed or registered under this article guarantees for a specified number of days
29 or until a specified date the availability of a specified rate of interest for a mortgage loan,
30 a specified formula by which the rate of interest will be determined, or a specific number
31 of discount points if the mortgage loan is approved and closed within the stated period
32 of time.

33 (9) 'Makes a mortgage loan' means to advance funds, offer to advance funds, or make a
34 commitment to advance funds to an applicant for a mortgage loan.

35 (10) 'Misrepresent' means to make a false statement of a substantive fact or to engage in,
36 with the intent to deceive or mislead, any conduct which leads to a false belief which is
37 material to the transaction.

1 (11) 'Mortgage broker' means any person who directly or indirectly solicits, processes,
 2 places, or negotiates mortgage loans for others, or offers to solicit, process, place, or
 3 negotiate mortgage loans for others or who closes mortgage loans which may be in the
 4 mortgage broker's own name with funds provided by others and which loans are assigned
 5 within 24 hours of the funding of the loans to the mortgage lenders providing the funding
 6 of such loans.

7 (12) 'Mortgage lender' means any person who directly or indirectly makes, originates,
 8 or purchases mortgage loans or who services mortgage loans.

9 (13) 'Mortgage loan' means a loan or agreement to extend credit made to a natural
 10 person, which loan is secured by a deed to secure debt, security deed, mortgage, security
 11 instrument, deed of trust, or other document representing a security interest or lien upon
 12 any interest in one-to-four family residential property located in Georgia, regardless of
 13 where made, including the renewal or refinancing of any such loan.

14 (14) 'Person' means any individual, sole proprietorship, corporation, limited liability
 15 company, partnership, trust, or any other group of individuals, however organized.

16 (15) 'Registrant' means any person required to register pursuant to Code Sections
 17 7-1-1001 and 7-1-1003.2.

18 (16) 'Residential property' means improved real property used or occupied, or intended
 19 to be used or occupied, as the principal residence of a natural person. Such term does not
 20 include rental property or second homes.

21 (17) 'Service a mortgage loan' means the collection or remittance for another or the right
 22 to collect or remit for another of payments of principal, interest, trust items such as
 23 insurance and taxes, and any other payments pursuant to a mortgage loan.

24 (18) 'Ultimate equitable owner' means a natural person who, directly or indirectly, owns
 25 or controls an ownership interest in a corporation or any other form of business
 26 organization, regardless of whether such natural person owns or controls such ownership
 27 interest through one or more natural persons or one or more proxies, powers of attorney,
 28 nominees, corporations, associations, limited liability companies, partnerships, trusts,
 29 joint-stock companies, other entities or devices, or any combination thereof."

30 SECTION 2.

31 Said article is further amended by striking paragraph (11) of Code Section 7-1-1001, relating
 32 to exemption for certain persons and entities, and inserting in lieu thereof the following:

33 "(11) A natural person who is not a loan officer and who is employed by a licensed
 34 mortgage broker, a licensed mortgage lender, or any person exempted from the licensing
 35 requirements of this article when acting within the scope of employment and under the
 36 supervision of the licensee or exempted person as an employee and not as an independent

1 contractor. To be exempt, a natural person must be employed by only one such employer
 2 and must be at all times eligible for employment in compliance with the provisions of
 3 Code Section 7-1-1004; All employees, including loan officers, must be at all time
 4 eligible for employment in compliance with the provisions and prohibitions of Code
 5 Section 7-1-1004;”

6 SECTION 3.

7 Said article is further amended by inserting new subsections (d), (e), (f), and (g) at the end
 8 of Code Section 7-1-1002, relating to prohibition of transaction of business without a license,
 9 to read as follows:

10 “(d)(1) On or after July 1, 2005, it is unlawful for any natural person to act as a loan officer
 11 without first obtaining authorization from the department. The department may provide
 12 for a phase-in of currently qualified persons. Loan officers may obtain authorization by:

13 (A) Providing to their employer a background check dated within 90 days from date
 14 of initial employment from the Georgia Crime Information Center which shows no
 15 offenses prohibited in Code Section 7-1-1004; and

16 (B) Providing to their employer certification of the education or experience required
 17 by Georgia law and regulation. Such requirements shall include at least one year of
 18 experience immediately preceding July 1, 2005, performing one or more duties of a
 19 loan officer for a licensee or exemptee. In the alternative, satisfactory completion of
 20 a minimum of eight hours of education in accordance with education requirements for
 21 licensed mortgage brokers. Providers of education shall be approved by the department
 22 and may not certify satisfactory completion of loan officer education requirements until
 23 such loan officer has passed a test reflecting comprehension of the material.

24 (2) An employer shall provide a current list to the department of all loan officers who
 25 have met the requirements of this subsection. Employers shall be required to check the
 26 department’s website to verify that no disqualifying final orders have been issued against
 27 any prospective loan officer.

28 (3) It is unlawful for any person to employ or compensate a loan officer unless the loan
 29 officer has met the requirements for being authorized by the department as provided in
 30 this subsection.

31 ~~(2)~~(e) The license authorization of a loan officer shall not be effective during any period
 32 when the ~~licensee~~ loan officer is not employed by a mortgage broker or mortgage lender
 33 licensed under this article. When a loan officer ceases to be employed by a mortgage
 34 broker or mortgage lender licensed under this article, the loan officer and the mortgage
 35 broker or mortgage lender licensed under this article by whom that person is employed
 36 shall promptly notify the department in writing. When a loan officer is to be employed, the

1 employer shall promptly notify the department of the hiring and certify to the employee's
 2 qualifications as provided in this Code section. A loan officer shall not be employed
 3 simultaneously by more than one mortgage broker or mortgage lender licensed under this
 4 article.

5 ~~(3)~~(f) Each mortgage broker or mortgage lender licensed under this article shall maintain
 6 on file with the department a list of all loan officers who are qualified and employed with
 7 the mortgage broker or mortgage lender. The department shall maintain on its website the
 8 ongoing list of all authorized loan officers.

9 (g) The department shall be authorized to charge a fee for each loan officer submitted by
 10 a licensee and to assess fines as authorized by law and regulation to defray the cost of
 11 administration and enforcement of this program. Such funds shall be deposited with the
 12 Office of Treasury and Fiscal Services, net of the cost of overhead to administer this
 13 program. Such overhead shall not exceed the revenue collected under this program."

14 SECTION 4.

15 Said article is further amended by striking subsections (c), (d), and (i) of Code Section
 16 7-1-1004, relating to requirements relative to licensees and registrants, and inserting in lieu
 17 thereof a new subsection (c), (d), and (i) to read as follows:

18 "(c) The department may establish by rule or regulation minimum education or experience
 19 requirements for an applicant for a mortgage broker license or renewal of such a license,
 20 or for an authorized loan officer.

21 (d) The department may not issue or may revoke a license or authorization if it finds that
 22 the applicant, or any person who is a director, officer, partner, agent, employee, or ultimate
 23 equitable owner of 10 percent or more of the applicant or any individual who directs the
 24 affairs or establishes policy for the licensee, has been convicted of a felony involving moral
 25 turpitude in any jurisdiction or of a crime which, if committed within this state, would
 26 constitute a felony involving moral turpitude under the laws of this state. For the purposes
 27 of this article, a person shall be deemed to have been convicted of a crime if such person
 28 shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall
 29 have been found guilty thereof by the decision or judgment of a court or federal magistrate
 30 or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension
 31 thereof, and regardless of whether first offender treatment without adjudication of guilt
 32 pursuant to the charge was entered, unless and until such plea of guilty, or such decision,
 33 judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful
 34 judicial process or until probation, sentence, or both probation and sentence of a first
 35 offender have been successfully completed and documented or unless the person convicted
 36 of the crime shall have received a pardon therefor from the President of the United States

1 or the Governor or other pardoning authority in the jurisdiction where the conviction was
 2 had or shall have received an official certification or pardon granted by the State Board of
 3 Pardons and Paroles which removes the legal disabilities resulting from such conviction
 4 and restores civil and political rights in this state."

5 "(i) The department may not issue a license to and may revoke a license from an applicant
 6 or licensee if such person employs any other person against whom a final cease and desist
 7 order has been issued within the preceding three years, if such order was based on a
 8 violation of Code Section 7-1-1013 or based on the conducting of a mortgage business
 9 without a required license, or authorization, or whose license has been revoked within three
 10 years of the date such person was hired."

11 SECTION 5.

12 Said article is further amended by striking subsection (b) of Code Section 7-1-1005, relating
 13 to renewal of licenses and registrations, and inserting in lieu thereof the following:

14 "(b) Any licensee or registrant making proper application, including all supporting
 15 documents, list of loan officers, moneys owed to the department, and all applicable fees
 16 required by this article and any regulations promulgated by the department, for a license
 17 or registration renewal to operate during the following license year and filing the
 18 application prior to April 1 shall be permitted to continue to operate pending final approval
 19 or disapproval of the application for the license or registration renewal for the following
 20 year if final approval or disapproval is not granted prior to July 1."

21 SECTION 6.

22 Said title is further amended by striking Code Section 7-1-1013, relating to the prohibition
 23 of certain acts, and inserting in lieu thereof the following:

24 "7-1-1013.

25 It is prohibited for any person transacting a mortgage business in or from this state,
 26 including any person required to be licensed, ~~or registered,~~ or authorized under this article
 27 and any person exempted from the licensing or registration requirements of this article
 28 under Code Section 7-1-1001, to:

- 29 (1) Misrepresent the material facts or make false statements or promises likely to
 30 influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a
 31 mortgagor to take a mortgage loan, or pursue a course of misrepresentation to the
 32 department or anyone through agents or otherwise;
- 33 (2) Misrepresent or conceal or cause another to misrepresent or conceal material factors,
 34 terms, or conditions of a transaction to which a mortgage lender or broker is a party,
 35 pertinent to an applicant or application for a mortgage loan or a mortgagor;

- 1 (3) Fail to disburse funds in accordance with a written commitment or agreement to
 2 make a mortgage loan;
- 3 (4) Improperly refuse to issue a satisfaction of a mortgage loan;
- 4 (5) Fail to account for or deliver to any person any personal property obtained in
 5 connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage,
 6 or other document or thing of value which has come into the possession of the mortgage
 7 lender or broker and which is not the property of the mortgage lender or broker, or which
 8 the mortgage lender or broker is not in law or at equity entitled to retain;
- 9 (6) Engage in any transaction, practice, or course of business which is not in good faith
 10 or fair dealing, or which operates a fraud upon any person, in connection with the
 11 attempted or actual making of, purchase of, or sale of any mortgage loan;
- 12 (7) Engage in any fraudulent home mortgage underwriting practices;
- 13 (8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor
 14 to sign a security deed, note, loan application, or other pertinent financial disclosure
 15 documents with any blank spaces to be filled in after it has been signed, except blank
 16 spaces relating to recording or other incidental information not available at the time of
 17 signing;
- 18 (9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose
 19 on the borrower's property. For purposes of this paragraph, there is a presumption that
 20 a person has made a residential mortgage loan with the intent to foreclose on the
 21 borrower's property if the following circumstances can be demonstrated:
- 22 (A) Lack of substantial benefit to the borrower;
- 23 (B) Lack of probability of full payment of the loan by the borrower; and
- 24 (C) A significant proportion of similarly foreclosed loans by such person;
- 25 (10) Provide an extension of credit or collect a mortgage debt by extortionate means; or
- 26 (11) Purposely withhold, delete, destroy, or alter information requested by an examiner
 27 of the department or make false statements or material misrepresentations to the
 28 department during the course of an examination or on any application or renewal form
 29 sent to the department."

30 SECTION 7.

31 Said article is further amended by striking subsections (a), (b), and (c) of Code Section
 32 7-1-1018, relating to cease and desist orders, and inserting in lieu thereof the following:

33 "7-1-1018.

- 34 (a) Whenever it shall appear to the department that any person required to be licensed or
 35 registered or required to file a notification statement under this article or employed by a
 36 licensee or registrant pursuant to Code Section 7-1-1001 or who would be covered by the

1 prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or
2 regulation of the department, the department may issue an initial written order requiring
3 such person to cease and desist immediately from such unauthorized practices. Such cease
4 and desist order shall be final 20 days after it is issued unless the person to whom it is
5 issued makes a written request within such 20 day period for a hearing. The hearing shall
6 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
7 Procedure Act.' A cease and desist order to an unlicensed or unauthorized person that
8 orders them to cease doing a mortgage business without the appropriate license or
9 department authorization shall be final 30 days from the date of issuance, and there shall
10 be no opportunity for an administrative hearing. If the proper license or evidence of
11 exemption or valid employment status during the time of the alleged offense is delivered
12 to the department within the 30 day period, the order shall be rescinded by the department.
13 If a cease and desist order is issued to a person who has been sent a notice of bond
14 cancellation and if the bond is reinstated or replaced and such documentation is delivered
15 to the department within the 30 day period following the date of issuance of the order, the
16 order shall be rescinded. If the notice of reinstatement of bond is not received within the
17 30 days, the license shall expire at the end of the 30 day period and the person shall be
18 required to make a new application for license and pay the applicable fees. In the case of
19 an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser
20 shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for
21 any subsequent violations.

22 (b) Whenever a person required to be licensed or authorized under this article shall fail to
23 comply with the terms of an order of the department which has been properly issued under
24 the circumstances, the department, upon notice of three days to such person, may, through
25 the Attorney General, petition the principal court for an order directing such person to obey
26 the order of the department within the period of time as shall be fixed by the court. Upon
27 the filing of such petition, the court shall allow a motion to show cause why it should not
28 be granted. Whenever, after a hearing upon the merits or after failure of such person to
29 appear when ordered, it shall appear that the order of the department was properly issued,
30 the court shall grant the petition of the department.

31 (c) Any person required to be licensed or authorized under this article who violates the
32 terms of any order issued pursuant to this Code section shall be liable for a civil penalty not
33 to exceed \$1,000.00. Each day during which the violation continues shall constitute a
34 separate offense. In determining the amount of penalty, the department shall take into
35 account the appropriateness of the penalty relative to the size of the financial resources of
36 such person, the good faith efforts of such person to comply with the order, the gravity of
37 the violation, the history of previous violations by such person, and such other factors or

1 circumstances as shall have contributed to the violation. The department may at its
2 discretion compromise, modify, or refund any penalty which is subject to imposition or has
3 been imposed pursuant to this Code section. Any person assessed as provided in this
4 subsection shall have the right to request a hearing into the matter within ten days after
5 notification of the assessment has been served upon the ~~licensee~~ person involved;
6 otherwise, such penalty shall be final except as to judicial review as provided in Code
7 Section 7-1-90."

8 **SECTION 8.**

9 This Act shall become effective on July 1, 2005.

10 **SECTION 9.**

11 All laws and parts of laws in conflict with this Act are repealed.