

House Bill 946

By: Representatives Teasley of the 38th, Morris of the 155th, Williamson of the 111th, Dutton of the 166th, Dawkins-Haigler of the 93rd, and others

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 the licensing of mortgage lenders and brokers, so as to prohibit certain mortgage
3 activities without a license; to provide for qualifications for the issuance of a mortgage loan
4 originator license; to provide for the power of the department to revoke or decline to issue
5 a license or registration in certain instances; to provide for the prohibition of certain conduct
6 by persons engaged in mortgage activities; to provide for a grace period for serving
7 residential mortgages with an inactive license or registration; to provide for certain criminal
8 penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to the
12 licensing of mortgage lenders and brokers, is amended by revising subsection (a) of Code
13 Section 7-1-1002, relating to conducting mortgage activities without a license or registration,
14 as follows:

15 "(a) It shall be prohibited for any person to ~~transact business in this state~~ directly or
16 indirectly engage in activities as a mortgage broker, a mortgage lender, or a mortgage
17 loan originator in this state or to hold or represent oneself as being authorized to engage
18 in such activities in this state unless such person:

- 19 (1) Is licensed or registered as such by the department utilizing the Nationwide
20 Mortgage Licensing System and Registry;
- 21 (2) Is a person exempted from the licensing or registration requirements pursuant to
22 Code Section 7-1-1001; or
- 23 (3) In the case of an employee of a mortgage broker or mortgage lender, ~~such person~~
24 has qualified to be relieved of the necessity for a license under the employee exemption
25 in paragraph (14) of subsection (a) of Code Section 7-1-1001; or

26 (4) In the case of a mortgage loan originator, ~~such person~~ is supervised by a mortgage
 27 broker, mortgage lender, or exemptee on a daily basis while performing mortgage
 28 functions; is employed by and works exclusively for only one mortgage broker,
 29 mortgage lender, or exemptee; and is paid on a W-2 basis by the employing mortgage
 30 broker, mortgage lender, or exemptee, except those natural persons exempt from
 31 licensure as a mortgage broker or mortgage lender under paragraph (17) of subsection
 32 (a) of Code Section 7-1-1001. Each licensed mortgage loan originator shall register
 33 with and maintain a valid unique identifier issued by the Nationwide Mortgage
 34 Licensing System and Registry. For the purposes of implementing an orderly and
 35 efficient mortgage loan originator process, the department may establish licensing rules
 36 or regulations and interim procedures for licensing and acceptance of applications; ~~or,~~
 37 (5) A loan processor or underwriter who is an independent contractor shall not engage in
 38 the activities of a loan processor or underwriter unless such independent contractor loan
 39 processor or underwriter obtains and maintains a mortgage broker or mortgage lender
 40 license. Each independent contractor loan processor or underwriter licensed as a mortgage
 41 broker or mortgage lender shall have and maintain a valid unique identifier issued by the
 42 Nationwide Mortgage Licensing System and Registry."

43 SECTION 2.

44 Said article is further amended by revising subsection (d), paragraph (4) of subsection (f),
 45 and subsections (h) and (o) of Code Section 7-1-1004, relating to requirements for the
 46 issuance of a mortgage license or registration, as follows:

47 "(d) Upon receipt of an application for a mortgage loan originator license, the department
 48 shall conduct such investigation as it deems necessary to determine that the mortgage loan
 49 originator applicant:

- 50 (1) Has never had a mortgage loan originator license revoked in any governmental
 51 jurisdiction, except that a subsequent formal vacation of such revocation shall not be
 52 deemed a revocation;
- 53 (2) Has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a
 54 domestic, foreign, or military court; provided, however, that any pardon of a conviction
 55 shall not be a conviction for purposes of this subsection;
- 56 (3) Has demonstrated financial responsibility, character, and general fitness such as to
 57 command the confidence of the community and to warrant a determination that the
 58 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes
 59 of this article;
- 60 (4) Has completed the prelicensing education requirement described in subsection (e) of
 61 this Code section; ~~and~~

62 (5) Has passed a written test that meets the test requirement described in subsection (f)
63 of this Code section; and

64 (6) Has not been the subject of a final determination by the Mortgage Testing and
65 Education Board of the Nationwide Mortgage Licensing System and Registry for a
66 violation of the rules of conduct for test takers sitting for any written national or state
67 licensing test within the previous five years."

68 "(4)(A) An individual shall not be considered to have passed a qualified written test
69 unless the individual achieves a test score of not less than 75 percent correct answers
70 to questions.

71 (B) An individual may ~~retake~~ take a test three consecutive times with each consecutive
72 taking occurring at least 30 days after the preceding test.

73 (C) After failing three consecutive tests, an individual shall wait at least six months
74 before taking the test again.

75 (D) A licensed mortgage loan originator who fails to maintain a valid license for a
76 period of five years or longer shall retake the test, not taking into account any time
77 during which such individual is a registered mortgage loan originator."

78 "(h) The department shall not issue or may revoke a license or registration if it finds that
79 the mortgage loan originator, mortgage broker, or mortgage lender applicant or licensee,
80 or any person who is a director, officer, partner, agent, employee, or ultimate equitable
81 owner of 10 percent or more of the mortgage broker or mortgage lender applicant,
82 registrant, or licensee or any individual who directs the affairs or establishes policy for the
83 mortgage broker or mortgage lender applicant, registrant, or licensee, has been convicted
84 of a felony in any jurisdiction or of a crime which, if committed within this state, would
85 constitute a felony under the laws of this state. Other than a mortgage loan originator, for
86 the purposes of this article, a person shall be deemed to have been convicted of a crime if
87 such person shall have pleaded guilty or nolo contendere to a charge thereof before a court
88 or federal magistrate or shall have been found guilty thereof by the decision or judgment
89 of a court or federal magistrate or by the verdict of a jury, irrespective of the
90 pronouncement of sentence or the suspension thereof, and regardless of whether first
91 offender treatment without adjudication of guilt pursuant to the charge was entered, or an
92 adjudication or sentence was otherwise withheld or not entered on the charge, unless and
93 until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside,
94 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or
95 both probation and sentence of a first offender have been successfully completed and
96 documented, or unless the person convicted of the crime shall have received a pardon
97 therefor from the President of the United States or the governor or other pardoning
98 authority in the jurisdiction where ~~the~~ a conviction occurred or shall have received an

99 official certification or pardon granted by the state's pardoning body ~~in the jurisdiction~~
 100 ~~where the conviction occurred~~ that removes the legal disabilities resulting from such
 101 conviction and restores civil and political rights in this state. For purposes of this article,
 102 a mortgage loan originator shall be deemed to have been convicted of a crime if he or she
 103 has pleaded guilty to, been found guilty of, or entered a first offender or nolo contendere
 104 plea to a felony in a domestic, foreign, or military court; provided, however, that any
 105 pardon of a conviction shall not be a conviction."

106 "(o) The department ~~shall~~ may not issue a ~~license or registration to and~~ or may revoke a
 107 license or registration from a mortgage broker or mortgage lender applicant, licensee, or
 108 registrant if such person:

109 (1) Has been the recipient of a final cease and desist order issued within the preceding
 110 five years if such order was based on a violation of subsection (h) of this Code section
 111 or Code Section 7-1-1002 or 7-1-1013;

112 (2) Employs any other person against whom a final cease and desist order has been
 113 issued within the preceding five years if such order was based on a violation of
 114 subsection (h) of this Code section or Code Section 7-1-1002 or 7-1-1013; or

115 (3) Has had his or her license revoked within five years of the date such person was hired
 116 or employs any other person who has had his or her license revoked within five years of
 117 the date such person was hired."

118 SECTION 3.

119 Said article is further amended by revising Code Section 7-1-1013, relating to the prohibition
 120 of certain acts relating to mortgage activities, as follows:

121 "7-1-1013.

122 It shall be prohibited for any person ~~transacting a~~ engaging in mortgage ~~business~~ activities
 123 in or from this state, including any person required to be licensed or registered under this
 124 article and any person exempted from the licensing or registration requirements of this
 125 article under Code Section 7-1-1001, to:

126 (1) Misrepresent the material facts, make false statements or promises, or submit false
 127 statements or documents likely to influence, persuade, or induce an applicant for a
 128 mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents
 129 or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized
 130 documents or other means to the department or anyone;

131 (2) Misrepresent or conceal or cause another to misrepresent or conceal material factors,
 132 terms, or conditions of a transaction to which a mortgage lender or broker is a party,
 133 pertinent to an applicant or application for a mortgage loan or a mortgagor;

- 134 (3) Fail to disburse funds in accordance with a written commitment or agreement to
 135 make a mortgage loan;
- 136 (4) Improperly refuse to issue a satisfaction of a mortgage loan;
- 137 (5) Fail to account for or deliver to any person any personal property obtained in
 138 connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage,
 139 or other document or thing of value which has come into the possession of a licensee or
 140 registrant and which is not the property of the licensee or registrant, or which the
 141 mortgage lender or broker is not in law or at equity entitled to retain;
- 142 (6) Engage in any transaction, practice, or course of business which is not in good faith
 143 or fair dealing, or which operates a fraud upon any person, in connection with the
 144 attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;
- 145 (7) Engage in any fraudulent home mortgage underwriting practices;
- 146 (8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor
 147 to sign a security deed, note, loan application, or other pertinent financial disclosure
 148 documents with any blank spaces to be filled in after it has been signed, except blank
 149 spaces relating to recording or other incidental information not available at the time of
 150 signing;
- 151 (9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose
 152 on the borrower's property. For purposes of this paragraph, there shall be a presumption
 153 that a person has made a residential mortgage loan with the intent to foreclose on the
 154 borrower's property if the following circumstances can be demonstrated:
- 155 (A) Lack of substantial benefit to the borrower;
- 156 (B) Lack of probability of full payment of the loan by the borrower; and
- 157 (C) A significant proportion of similarly foreclosed loans by such person;
- 158 (10) Provide an extension of credit or collect a mortgage debt by extortionate means; or
- 159 (11) Purposely withhold, delete, destroy, or alter information requested by an examiner
 160 of the department or make false statements or material misrepresentations to the
 161 department or the Nationwide Mortgage Licensing System and Registry or in connection
 162 with any investigation conducted by the department or another governmental agency."

163 **SECTION 4.**

164 Said article is further amended in subsection (f) of Code Section 7-1-1017, relating to the
 165 suspension and revocation of licenses and registrations of a mortgage loan originator, lender,
 166 or broker, as follows:

167 "(f) Nothing in this article shall preclude a ~~mortgage broker or mortgage lender whose~~
 168 ~~license or registration has been suspended or revoked from continuing to service mortgage~~
 169 ~~loans pursuant to servicing contracts in existence at the time of the suspension or~~

170 ~~revocation for a period not to exceed six months after the date of the final order of the~~
 171 ~~department suspending or revoking the license or registration has expired or been revoked,~~
 172 ~~suspended, or surrendered from servicing residential mortgage loans for itself or other~~
 173 ~~mortgage lenders for a period not to exceed six months from the date on which the license~~
 174 ~~or registration ceased to be active; provided, however, that any servicing performed for~~
 175 ~~other mortgage lenders during a time in which a license or registration ceased to be active~~
 176 ~~shall be limited to written servicing contracts that were in existence on the last day the~~
 177 ~~license or registration was active."~~

178 **SECTION 5.**

179 Said article is further amended in subsection (a) of Code Section 7-1-1018, relating to cease
 180 and desist orders issued by the department for prohibited mortgage activities, as follows:

181 "(a) Whenever it shall appear to the department that any person required to be licensed or
 182 registered under this article or employed by a licensee or who would be covered by the
 183 prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or
 184 regulation of the department, the department may issue an initial written order requiring
 185 such person to cease and desist immediately from such unauthorized practices. Such cease
 186 and desist order shall be final 20 days after it is issued unless the person to whom it is
 187 issued makes a written request within such 20 day period for a hearing. The hearing shall
 188 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
 189 Procedure Act.' A cease and desist order to an unlicensed person that orders ~~them~~ that
 190 unlicensed person to cease ~~doing a mortgage business~~ engaging in mortgage activities
 191 without the appropriate license shall be final 30 days from the date of issuance, and there
 192 shall be no opportunity for an administrative hearing. If the proper license or evidence of
 193 exemption or valid employment status during the time of the alleged offense is delivered
 194 to the department within the 30 day period, the order shall be rescinded by the department.
 195 If a cease and desist order is issued to a person who has been sent a notice of bond
 196 cancellation and if the bond is reinstated or replaced and such documentation is delivered
 197 to the department within the 30 day period following the date of issuance of the order, the
 198 order shall be rescinded. If the notice of reinstatement of the bond is not received within
 199 the 30 days, the license shall expire at the end of the 30 day period, and the person shall be
 200 required to make a new application for license and pay the applicable fees. In the case of
 201 an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser
 202 shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for
 203 any subsequent violations. Any cease and desist order sent to the person at both his or her
 204 personal and business addresses pursuant to this Code section that is returned to the
 205 department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently served."

206 **SECTION 6.**

207 Said article is further amended in Code Section 7-1-1019, relating to criminal penalties for
208 prohibited mortgage activities, as follows:

209 "7-1-1019.

210 Any person and the several members, officers, directors, agents, and employees thereof
211 who:

212 (1) Shall violate the provisions of subsection (a) of Code Section 7-1-1002, by ~~the~~
213 ~~willfull transaction of a~~ willfully engaging in mortgage business activities without a
214 license or exemption, shall be guilty of a felony punishable as provided in Code Section
215 7-1-845; or

216 (2) Shall violate any of the other provisions of this article shall be guilty of a
217 misdemeanor and shall be punished by imprisonment for not more than one year or by
218 a fine of not more than \$1,000.00, or by both fine and imprisonment."

219 **SECTION 7.**

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