

House Bill 750 (AS PASSED HOUSE AND SENATE)

By: Representatives Frye of the 118th, Williams of the 119th, Abrams of the 89th, Cheokas of the 138th, England of the 116th, 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 licensing of mortgage lenders and mortgage brokers, so as to provide for an
3 exemption to mortgage loan originator licensing requirements for employees of certain
4 nonprofit corporations; to provide for related matters; to provide for an effective date; to
5 repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
9 licensing of mortgage lenders and mortgage brokers, is amended by revising Code Section
10 7-1-1001, relating to exemptions from licensing requirements of mortgage brokers and
11 mortgage lenders, as follows:

12 "7-1-1001.

13 (a) The following persons shall not be required to obtain a mortgage loan originator,
14 mortgage broker, or mortgage lender license and shall not be subject to the provisions of
15 this article but may be subject to registration requirements, unless otherwise provided by
16 this article:

17 (1) Any lender authorized to engage in business as a bank, credit card bank, savings
18 institution, building and loan association, or credit union under the laws of the United
19 States, any state or territory of the United States, or the District of Columbia, the deposits
20 of which are federally insured;

21 (2) Any wholly owned subsidiary of any lender described in paragraph (1) of this
22 subsection. Any subsidiary that violates any applicable law of this article may be subject
23 to a cease and desist order as provided for in Code Section 7-1-1018;

24 (2.1) Any wholly owned subsidiary of any bank holding company; provided, however,
25 that such subsidiary shall be subject to registration requirements in order to facilitate the

26 department's handling of consumer inquiries. Such requirements are contained in Code
27 Section 7-1-1003.3;

28 (3) Registered mortgage loan originators, when acting for an entity described in
29 paragraph (1) or (2) of this subsection. To qualify for this exemption, an individual shall
30 be registered with and maintain a unique identifier through registration with the
31 Nationwide Mortgage Licensing System and Registry;

32 (4) Any individual who offers or negotiates terms of a residential mortgage loan with or
33 on behalf of an immediate family member of such individual. For purposes of this
34 exemption, the term 'immediate family member' means a spouse, child, sibling, parent,
35 grandparent, or grandchild. Immediate family members shall include stepparents,
36 stepchildren, stepsiblings, and adoptive relationships;

37 (5) An attorney licensed to practice law in Georgia who negotiates the terms of a
38 residential mortgage loan on behalf of a client as an ancillary matter to the attorney's
39 representation of the client, unless the attorney is compensated by a lender, a mortgage
40 broker, or other mortgage loan originator or by any agent of such lender, mortgage
41 broker, or other mortgage loan originator;

42 (6) A Georgia licensed real estate broker or real estate salesperson not actively engaged
43 in the business of negotiating mortgage loans or a Georgia licensed real estate salesperson
44 providing information to a lender or its agent related to an existing or potential short sale
45 transaction in which a separate fee is not received by such real estate broker or real estate
46 salesperson; however, such real estate broker or real estate salesperson who directly or
47 indirectly negotiates, places, or finds a mortgage for others shall not be exempt from the
48 provisions of this article;

49 (7) Any person performing any act relating to mortgage loans under order of any court;

50 (8) Any natural person or the estate of or trust created by a natural person making a
51 mortgage loan with his or her own funds for his or her own investment, including those
52 natural persons or the estates of or trusts created by such natural persons who make a
53 purchase money mortgage for financing sales of their own property;

54 (9) The United States of America, the State of Georgia or any other state, and any
55 agency, division, or corporate instrumentality of any governmental entity, including
56 without limitation: the Georgia Housing and Finance Authority, the Georgia
57 Development Authority, the Federal National Mortgage Association (FNMA), the
58 Federal Home Loan Mortgage Corporation (FHLMC), the Government National
59 Mortgage Association (GNMA), the United States Department of Housing and Urban
60 Development (HUD), the Federal Housing Administration (FHA), the Department of
61 Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit
62 Administration and its chartered agricultural credit associations;

- 63 (10) Any individual who offers or negotiates terms of a residential mortgage loan
 64 secured by a dwelling that serves as the individual's residence;
- 65 (11) Any person who makes a mortgage loan to an employee of such person as an
 66 employment benefit;
- 67 (12) Any licensee under Chapter 3 of this title, the 'Georgia Industrial Loan Act,'
 68 provided that any mortgage loan made by such licensee is for \$3,000.00 or less;
- 69 (13) Nonprofit corporations making mortgage loans to promote home ownership or
 70 improvements for the disadvantaged;
- 71 (14) A natural person employed by a licensed or registered mortgage broker, a licensed
 72 or registered mortgage lender, or any person exempted from the mortgage broker or
 73 mortgage lender licensing requirements of this article when acting within the scope of
 74 employment and under the supervision of the mortgage broker or mortgage lender or
 75 exempted person as an employee and not as an independent contractor, except those
 76 natural persons exempt from licensure as a mortgage broker or mortgage lender under
 77 paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or
 78 mortgage lender, a natural person shall be employed by only one such employer and shall
 79 be at all times eligible for employment in compliance with the provisions and
 80 prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition
 81 of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall
 82 be subject to mortgage loan originator licensing requirements. A natural person against
 83 whom a cease and desist order has become final shall not qualify for this exemption while
 84 under the employment time restrictions of subsection (o) of Code Section 7-1-1004 if
 85 such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose
 86 license was revoked within five years of the date such person was hired;
- 87 (15) Any person who purchases mortgage loans from a mortgage broker or mortgage
 88 lender solely as an investment and who is not in the business of brokering, making,
 89 purchasing, or servicing mortgage loans;
- 90 (16) Any natural person who makes five or fewer mortgage loans in any one calendar
 91 year. A person other than a natural person who makes five or fewer mortgage loans in
 92 any one calendar year shall not be exempt from the licensing requirements of this article;
- 93 or
- 94 (17)(A) A natural person otherwise required to be licensed as a mortgage lender or
 95 mortgage broker, who is under an exclusive written independent contractor agreement
 96 with any person that is a wholly owned subsidiary of a financial holding company or
 97 bank holding company, savings bank holding company, or thrift holding company,
 98 which subsidiary also meets the following requirements, subject to the review and
 99 approval of the department:

100 (i) The subsidiary has provided an undertaking of accountability supported by a
 101 surety bond equal to the lesser of \$1 million or \$50,000.00 per exempt person, to
 102 cover all of its persons exempted by this paragraph, that includes full and direct
 103 financial responsibility for the mortgage broker activities of each such exempted
 104 person, and also provides for the education of the exempt persons, the handling of
 105 consumer complaints related to the exempt persons, and the supervision of the
 106 mortgage broker activities of the exempt persons;

107 (ii) The subsidiary has applied for and been granted a mortgage broker or mortgage
 108 lender license, consistent with the provisions of this article and renewable annually;
 109 and

110 (iii) The subsidiary has paid applicable fees for this license, which license fees shall
 111 be the lesser of one-half of the sum of the cost of the individual licenses or
 112 \$100,000.00.

113 (B) To maintain the exemption, a natural person shall:

114 (i) Solicit, process, place, or negotiate a mortgage loan to be made only by the
 115 licensed subsidiary or its affiliate; and

116 (ii) Be at all times in compliance with the provisions and prohibitions of Code
 117 Section 7-1-1013 and the provisions and prohibitions applicable to employees under
 118 Code Section 7-1-1004.

119 (C) For purposes of this paragraph, the term 'financial holding company' means a
 120 financial holding company as defined in the Bank Holding Company Act of 1956, as
 121 amended.

122 (D) The commissioner shall provide by rule or regulation for the implementation of
 123 this paragraph; or

124 (18)(A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan
 125 originator only with respect to his or her work duties with the bona fide nonprofit
 126 corporation and who acts as a mortgage loan originator only with respect to mortgage
 127 loans with terms that are favorable to the borrower shall be exempt from obtaining a
 128 mortgage loan originator license. In order for a corporation to be considered a bona
 129 fide nonprofit corporation under this paragraph, the department shall determine, under
 130 criteria and pursuant to processes established by the department, that the nonprofit
 131 corporation:

132 (i) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal
 133 Revenue Code of 1986;

134 (ii) Promotes affordable housing;

135 (iii) Conducts its activities in a manner that serves public or charitable purposes,
 136 rather than commercial purposes;

137 (iv) Receives funding and revenue and charges fees in a manner that does not
 138 incentivize it or its employees to act other than in the best interests of its clients;
 139 (v) Compensates its employees in a manner that does not incentivize employees to
 140 act other than in the best interests of its clients;
 141 (vi) Provides or identifies for the borrower mortgage loans with terms favorable to
 142 the borrower and comparable to mortgage loans and housing assistance provided
 143 under government housing assistance programs. In order for mortgage loans to have
 144 terms that are favorable to the borrower, the department shall determine that the terms
 145 are consistent with loan origination in a public or charitable context, rather than in a
 146 commercial context; and
 147 (vii) Satisfies the exemption from licensure set forth in paragraph (13) of this
 148 subsection.

149 (B) The department shall periodically examine the books and activities of an
 150 organization it has previously identified as a bona fide nonprofit corporation for
 151 purposes of this paragraph in order to determine if it continues to meet the criteria for
 152 such status under subparagraph (A) of this paragraph. In conducting such an
 153 examination, the department shall have all of the powers set forth in Code Section
 154 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status,
 155 then the employee exemption from having a mortgage loan originator license shall no
 156 longer be applicable.

157 (b) Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14),
 158 (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from
 159 licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2),
 160 (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code
 161 section shall be intended to exempt natural persons from compliance with mortgage loan
 162 originator licensing requirements as set forth in this article and the Secure and Fair
 163 Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a
 164 mortgage loan originator, unless specifically exempted by paragraph (3), (4), (5), (6), or
 165 (10), or (18) of subsection (a) of this Code section, shall obtain a mortgage loan originator
 166 license as required by Code Section 7-1-1002 whether they are employed by a mortgage
 167 broker, mortgage lender, or person exempted as a mortgage broker or lender as set forth
 168 in this subsection."

169 **SECTION 2.**

170 This Act shall become effective upon its approval by the Governor or upon its becoming law
 171 without such approval.

172

SECTION 3.

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