



# **2 Hour TN SAFE: Tennessee Mortgage Laws and Regulations**

## **Student Manual (Online Instructor-Led)**

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## **Tennessee Department of Financial Institutions**

### **THE DEPARTMENT OF FINANCIAL INSTITUTIONS**

The primary statutory mission of the Department of Financial Institutions is to provide the people of Tennessee with a safe and sound system of banks and other institutions by ensuring safety and soundness and compliance with governing law, while giving institutions the opportunity to contribute to the economic progress of Tennessee and the nation.

The Department of Financial Institutions' vision is the establishment of a regulatory program that provides for a sound state financial services system within which well-meaning institutions have the opportunity to succeed and serve their communities by encouraging commerce while there is strong enforcement of laws and regulations to protect citizens.

### **DEPARTMENT STRUCTURE**

There are four divisions within the Department of Financial Institutions:

- Bank Division
- Compliance Division
- Credit Union Division
- Consumer Resource Division

#### **Bank Division**

Charged with the responsibility of evaluating applications for new institutions, branches, expanded financial activities and corporate reorganizations. It has the legal responsibility for ensuring the Tennessee state-chartered banking system runs on a safe and sound basis, and in its supervisory role, periodically examines the financial soundness of:

- state-chartered banks,
- savings banks,
- non-depository trust companies, and
- money transmitters.

The staff also examines business and industrial development corporations for compliance with governing statutes.

## **Compliance Division**

Responsible for the licensing and regulatory supervision of the following types of financial institutions operating in Tennessee:

- Mortgage Brokers, Lenders and Servicers,
- Tennessee Industrial Loan & Thrift Companies,
- Premium Finance Companies,
- Deferred Presentment Companies,
- Check Cashing Companies, and
- Title Pledge Lending Companies.

In that capacity, the Division is responsible for the:

- evaluation of applications for licensure,
- issuance and maintenance of licenses and registrations for those companies, and
- periodic examination of licensed entities to ensure compliance with both State and Federal laws.

## **Credit Union Division**

Responsible for the supervision and examination of state-chartered and corporate credit unions. The Division is currently accredited by the National Association of State Credit Union Supervisors.

## **Consumer Resource Division**

A clearinghouse for financial information and education that offers assistance to Tennesseans looking for information on how to deal with financial institutions regulated by the Department.

## **RESPONSIBILITIES AND LIMITATIONS**

### **Purpose of the Tennessee Residential Lending, Brokerage and Servicing Act, Title 45 - Chapter 13 (45-13-102)**

The purpose is to:

- ensure a sound system of making residential mortgage loans through the licensing, examination and regulation of mortgage lenders, mortgage loan brokers, mortgage loan servicers and mortgage loan originators.
- carry out the purposes and to be compliant with the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. §5101 et seq.

- Administrative rules found in Chapter 0180 were created to assist in the enforcement of mortgage related statutes. These rules will also be covered throughout this course.

### **Administrative Authority** (45-13-103, 45-13-501, 45-13-504, 45-13-505, 45-13-506)

The Commissioner is granted broad administrative authority to administer, interpret and enforce the Act and to promulgate reasonable substantive and procedural rules and regulations to carry out the purposes of the Act.

The Commissioner is also authorized to require mortgage lenders, mortgage loan brokers and mortgage loan servicers, to be licensed or registered, or both, through the Nationwide Mortgage Licensing System and Registry (NMLS). The commissioner may:

- announce rules and regulations necessary for participation in, transition to or operation of the NMLS;
- establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter;
- require that applications for licensing, as well as renewals of such licenses, be filed with the NMLS;
- require that any required fees be paid through the NMLS;
- establish deadlines for transitioning to the NMLS;
- establish a process whereby mortgage loan originators may challenge information entered into the NMLS by the Commissioner;
- enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the commissioner.
- regularly report violations of the Act by mortgage loan originators, as well as enforcement actions and other relevant information to the NMLS

### **Investigations and Examinations by the Commissioner**

Any person aggrieved by the conduct of a person subject to the Act in connection with a residential mortgage loan or in connection with any other activities of a mortgage lender, mortgage loan servicer or mortgage loan broker may file a written complaint with the Commissioner, who is authorized to investigate the complaint.

The Commissioner shall have the authority to conduct investigations and examinations of persons subject to the Act (including those suspected to be engaging in business subject to the Act) as often as necessary. In order to carry out the purposes of the Act, the Commissioner may:

- enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or obtained evidence;
- use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate persons subject to the Act;
- accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- accept audit reports made by independent certified public accountants for the person subject to the Act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of examination, report of investigation or other writing of the Commissioner.

For purposes of initial licensing, renewal, suspension or revocation, or for general or specific inquiry relative to any other investigation or examination, the Commissioner shall have the authority to access, receive, review and use any books, accounts, records, files, documents, information or evidence, including, but not limited to, the following:

- Criminal, civil and administrative history information;
- Personal history and experience information including independent credit reports obtained from a consumer reporting agency; and
- Any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control or custody of the documents, information or evidence.

To carry out an investigation or examination, the Commissioner may:

- issue subpoenas,
- administer oaths,
- compel attendance,
- examine under oath all persons whose testimony may be relevant and compel the production of any relevant records, books, papers, contracts, accounts, files or other documents.
- interview the officers, principals, loan originators, employees, independent contractors, agents and customers of the subject of the investigation or examination concerning the business of the licensee or other person subject to the Act.

Each person subject to investigation or examination shall:

- upon request of the Commissioner, make available the books and records relating to the operations of the person,
- permit the Commissioner to have access to the person's offices and places of business,
- make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including, but not limited to:
  - accounting compilations;

- information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- other information deemed necessary.
- pay to the Commissioner the reasonable and actual expenses of the investigation or examination,
- not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information that the Commissioner may lawfully examine or investigate.

If any person fails to comply with a subpoena of the Commissioner, or to testify concerning any matter about which the person may be interrogated, the Commissioner may:

- petition any court of competent jurisdiction for enforcement
- suspend any license issued to the person pending compliance with the subpoena.

The Commissioner has exclusive administrative power to investigate and enforce any and all complaints filed by any person that are not criminal in nature, which complaints relate to mortgage lenders, mortgage loan brokers, mortgage servicers or mortgage loan originators.

The authority of the Commissioner shall remain in effect whether the person subject to investigation or examination acts or claims to act under any licensing or registration law or claims to act without such authority.

**Nationwide Mortgage Licensing System and Registry (NMLS) Challenge Process** (0180-17-13)

A person may challenge information entered by the Department of Financial Institutions into the NMLS.

- A challenge must be made in writing to the Department and addressed to the attention of the Assistant Commissioner for the Compliance Division.
- The grounds for the challenge shall be limited to a review of the factual accuracy of the information regarding the person's record submitted to the NMLS by the Department.
- A challenge shall be considered moot if the challenged information is no longer available in the NMLS.

The challenge shall include:

- the person's name,
- unique identifier,
- a statement of the alleged inaccuracy of the information entered into the NMLS,
- available proof or corroboration that supports the person's challenge, including, but not limited to, certified copies of official documents or court orders.

Upon receipt of the challenge, the Commissioner shall investigate the challenge, along with any information provided, and determine whether the challenged information entered into the NMLS is factually accurate.

The Commissioner shall notify the person of the determination within 60 days of the receipt of the written challenge.

If the Commissioner determines that the information submitted to the NMLS is factually inaccurate, the Commissioner shall take prompt steps to correct the information submitted.

A person aggrieved by the Commissioner's determination regarding a challenge may request a hearing on the question of whether the challenged information is factually accurate.

- The request for hearing must be in writing within 30 days of the commissioner's determination.
- If the hearing is timely requested, it shall be conducted under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, and the burden of proving that the challenged information is factually inaccurate is on the person aggrieved by the Commissioner's decision regarding the challenge.

## Tennessee Mortgage Law and Rules Definitions

### **DEFINITIONS** (45-13-105, 47-15-101, 0180-17-01)

*This lesson will provide key mortgage terminology associated with this course. Additional definitions are provided in your course resource materials.*

#### **Branch Manager**

The individual whose principal office is physically located in, who is in charge of and who is responsible for the business operations of a branch office of a licensed mortgage lender or mortgage loan broker.

#### **Branch Office**

An office of a licensed mortgage lender or mortgage loan broker that is separate and distinct from the licensee's principal place of business.

#### **Brokerage/Finder Fee**

A fee charged by a mortgage loan broker or residential mortgage lender that is paid by or charged to a loan applicant for mortgage loan origination in which no part of the fee is for service rendered by a third party provider.

#### **Commitment Fee**

Any fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a residential mortgage loan in accordance with the terms of the commitment or as a requirement for acceptance by the applicant of a commitment.

- Does not include interest or fees paid to third persons.

#### **Control**

The power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer or employee of the person. A person who, directly or indirectly, owns, controls, holds the power to vote, or holds



proxies representing 25% or more of the outstanding voting securities issued by another person is presumed to control the other person. For purposes of this section, the commissioner may determine whether a person, in fact, controls another person.

### **Federal Banking Agencies**

The board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation.

### **Fees Paid to Third Persons**

The bona fide fees or charges paid by the applicant for a residential mortgage loan to third persons other than the mortgage lender or mortgage loan broker, or paid by the applicant to or retained by the mortgage lender or mortgage loan broker for transmittal to such third persons in connection with the residential mortgage loan, including, but not limited to:

- mail service charges,
- tax service charges,
- recording taxes and fees,
- reconveyance or releasing fees,
- appraisal fees,
- credit report fees,
- attorney fees,
- fees for title reports and title searches,
- title insurance premiums,
- surveys, and similar charges.

### **Home Loan**

A loan which is:

- secured by real estate owned and occupied by the borrower for family residential purposes and which may include not more than three (3) additional residential units; and
- amortized over a period greater than 181 months.

### **Immediate Family Member**

A spouse, child, sibling, parent, grandparent or grandchild; includes stepparents, stepchildren, stepsiblings and adoptive relationships.

### **Loan Processor or Underwriter**

An individual who performs clerical or support duties as an employee at the direction, supervision, and instruction of a person licensed or exempt from licensing. **Clerical or Support Duties** include, subsequent to the receipt of an application:

- The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and/or
- Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

### **Lock-In Agreement**

A written agreement between a mortgage lender and an applicant for a residential mortgage loan that establishes and sets an interest rate, discount points, and lock-in fees to be charged in connection with a residential mortgage loan that is closed within the time period specified in the agreement.

A lock-in agreement can be entered into before a residential mortgage loan approval, subject to a residential mortgage loan being approved and closed, or after a residential mortgage loan approval.

- A **Commitment Agreement** that establishes and sets an interest rate, discount points, and the commitment fees to be charged in connection with a residential mortgage loan that is also closed within the time period specified in the agreement is a lock-in agreement.

### **Lock-In Fee**

A fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement.

- Does not include interest or fees paid to third persons.

### **Loss Mitigation Specialist**

An individual employed by a mortgage lender, mortgage loan servicer, or by a registrant authorized to make residential mortgage loans under the Industrial Loan and Thrift Companies Act, whose activities are confined to the negotiation of terms of an existing residential mortgage

loan owned or being serviced by that licensee or registrant for purposes of modifying the terms of the loan, such as by reducing the interest rate or extending the term of the loan, when the modification is done for purposes of avoiding or curing default; does not include the negotiation of the refinancing of the loan.

### **Mortgage Lender**

Any person who makes a residential mortgage loan or holds the person out as able to make a residential mortgage loan.

### **Mortgage Loan Broker**

Any person who for compensation or other gain, is paid directly or indirectly, or in expectation of compensation or other gain, solicits, places, negotiates or originates a residential mortgage loan for another person or offers to solicit, place, negotiate or originate a residential mortgage loan for another person or who closes a residential mortgage loan that may be in the mortgage loan broker's own name with funds provided by another person and which loan is thereafter assigned to the person providing the funding of the loan, regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail or in person with the borrower or borrowers or potential borrower or borrowers;

### **Mortgage Loan Originator**

An individual who for compensation or gain or in the expectation of compensation or gain:

- takes a residential mortgage loan application; or
- offers or negotiates terms of a residential mortgage loan.

Does not include:

- an individual engaged solely as a loan processor or underwriter;
- a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Tennessee law, unless the person or entity is compensated by a mortgage lender, mortgage loan broker, or other mortgage loan originator or by any agent of the mortgage lender, mortgage loan broker or other mortgage loan originator;
  - **Real Estate Brokerage Activities** means any activity that involves offering or providing real estate brokerage services to the public, including:
    - acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;
    - bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

- negotiating, on behalf of any party, 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 the transaction;
- engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law;
- a person or entity solely involved in extensions of credit relating to timeshare plans.

### **Mortgage Loan Servicer**

Any person who, in the regular course of business, assumes responsibility for servicing and accepting payments for a residential mortgage loan.

### **Nationwide Mortgage Licensing System and Registry (NMLS)**

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 licensed mortgage loan originators.

### **Registered Mortgage Loan Originator**

Any individual who:

- Meets the definition of mortgage loan originator and is an employee of:
  - A depository institution;
  - A subsidiary that is:
    - Owned and controlled by a depository institution; and
    - Regulated by a federal banking agency; or
  - An institution regulated by the farm credit administration; and
- Is registered with, and maintains a unique identifier through, the NMLS

### **Residential Mortgage Loan**

Any loan, including an extension of credit, 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.

### **Unique Identifier**

A number or other identifier assigned by protocols established by the NMLS.

## Tennessee License Law and Regulations

### **PERSONS REQUIRED TO BE LICENSED**

#### **License Required and Exceptions for Mortgage Lenders, Mortgage Loan Brokers, and Mortgage Loan Servicers** (45-13-201)

No person shall act as a mortgage lender, mortgage loan broker or mortgage loan servicer in Tennessee without first obtaining a license.

#### **The following are exempt from the licensing requirement:**

- Any depository institution;
- Any subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency;
- Any institution regulated by the farm credit administration;
- Any individual who makes a residential mortgage loan to, or offers or negotiates terms of a residential mortgage loan with or on behalf of, an immediate family member of the individual;
- An individual who makes a residential mortgage loan, or simply offers or negotiates terms of a residential mortgage loan, when the loan is secured by a dwelling that served as the individual's residence; and
- A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage loan broker, a mortgage loan originator or by any agent of the mortgage lender, mortgage loan broker or mortgage loan originator.
- Any registrant making residential mortgage loans that is authorized to do so under the Industrial Loan and Thrift Companies Act; provided, however, that all mortgage loan originators of the registrant must be licensed.
- Upon approval or consent by the United States Department of Housing and Urban Development, the Commissioner shall be authorized to exempt individuals working for bona fide nonprofit corporations and government agencies.

#### **License Required and Exceptions for Mortgage Loan Originators** (45-13-301)

An individual, unless specifically exempted, shall not engage in the business of a mortgage loan originator in Tennessee without first obtaining and maintaining annually a license issued by the Commissioner.

- The individual must also be sponsored by a licensed mortgage lender or mortgage loan broker or by a registrant in accordance with the Industrial Loan and Thrift Companies Act.
- Each individual must register with and maintain a valid unique identifier issued by

the NMLS.

- The issuance of a mortgage lender or mortgage loan broker license to an individual does not exempt that individual from the licensing requirements of this section.

An individual engaging solely in loan processor or underwriter activities shall not represent 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 the individual can or will perform any of the activities of a mortgage loan originator.

- A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license.

Any individual acting as a loss mitigation specialist is required to comply with the mortgage loan originator licensing requirements.

- A loss mitigation specialist may refer a mortgagor to a mortgage loan originator for purposes of refinancing the residential mortgage loan without the requirement of a license; provided:
  - that the loss mitigation specialist does not receive any compensation or gain for the referral; and
  - that the referral is made in accordance with any applicable state and federal law.

**In addition to those who are exempt under provisions of the Act relating to mortgage lenders, mortgage loan brokers, and mortgage loan servicers, the following are also exempt from the licensing requirement:**

- Registered mortgage loan originators
- Any individual performing the activities of a manufactured home retailer or a dealer of modular building units; provided, that:
  - The individual is employed by a licensed manufactured home retailer or a licensed dealer of modular building, or holds such license themselves;
  - The individual does not in any way offer or negotiate terms of a residential mortgage loan, including by counseling with respect to such terms;
  - Neither the individual, nor the employing manufactured home retailer or dealer of modular building units, receives compensation or other gain from a mortgage lender, mortgage loan broker or mortgage loan originator, or by any agent of the mortgage lender, mortgage loan broker or mortgage loan originator.

### **Letter of Exemption** (0180-17-09)

The Department of Financial Institutions may issue a letter of exemption to any entity or person that provides the Department with sufficient written evidence of exemption that is signed by an authorized legal or corporate representative.

## **LICENSEE QUALIFICATIONS AND APPLICATION PROCESS: MORTGAGE LENDERS, MORTGAGE LOAN BROKERS, AND LOAN SERVICERS**

### **Financial Responsibility – Surety Bond** (45-13-204, 0180-17-08)

At the time of filing an application for a mortgage lender, mortgage loan broker, or loan servicer license, the applicant must file a surety bond with the Commissioner.

- The surety bond must be payable to the state, for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the licensee.
  - The bond must be issued by a bonding company qualified to do business in Tennessee.
- The bond must be maintained for not less than 24 months following the expiration, revocation, suspension or surrender of the license.
- The licensee must immediately file a new bond if a claim is paid as a result of any action filed against a licensee.

The surety bond shall be maintained in the following amounts for the first calendar year of licensing:

- For mortgage lender applicants - \$200,000
- For mortgage loan broker applicants - \$90,000

## Renewal

As a condition of renewing a mortgage lender or mortgage loan broker license, the licensee shall file a surety bond providing coverage for each of its mortgage loan originators. The amount is to reflect the dollar amount of Tennessee residential mortgage loans originated by the licensee in the calendar year immediately preceding the calendar year in which the renewal application is filed, as follows:

<b>Mortgage Loan Brokers</b>	
<b>Amount Originated</b>	<b>Surety Bond Amount</b>
<b>Less than \$10,000,000</b>	<b>\$45,000</b>
<b>More than \$10,000,000 but less than \$50,000,000</b>	<b>\$90,000</b>
<b>\$50,000,000 or more</b>	<b>\$135,000</b>

  

<b>Mortgage Lenders</b>	
<b>Amount Originated</b>	<b>Surety Bond Amount</b>
<b>Less than \$10,000,000</b>	<b>\$100,000</b>
<b>More than \$10,000,000 but less than \$50,000,000</b>	<b>\$200,000</b>
<b>\$50,000,000 or more</b>	<b>\$300,000</b>

If the renewal application is being filed in the year in which the license was issued, or in a year in which the license was issued in the immediately preceding calendar year, the mortgage lender or mortgage loan broker shall file a surety bond providing coverage for each of its mortgage loan originators in the amount of \$200,000 for a mortgage lender and in the amount of \$90,000 for a mortgage loan broker.

If the applicant or licensee is a combination of a mortgage lender, mortgage loan broker, and/or mortgage loan servicer, the applicant or licensee is only required to provide one (1) surety bond, which shall be in the highest amount required if the applicant or licensee were solely a mortgage lender, mortgage loan broker, or mortgage loan servicer, and not a combination thereof.

- An applicant or licensee that is solely a loan servicer shall maintain a surety bond in the amount of \$200,000.

## **Financial Responsibility – Net Worth** (45-13-204, 0180-17-08)

At the time of filing an application for a mortgage lender, mortgage loan broker, or loan servicer license, the applicant, in addition to maintaining a surety bond, must have a tangible net worth (tangible assets less liabilities) of:

- not less than \$25,000 and
- an additional tangible net worth of \$25,000 for each additional branch office within Tennessee



### **Application for License — Investigation Fee** (45-13-202)

The application for a mortgage lender, mortgage loan broker, or loan servicer license must contain the following:

- The applicant's name and principal business address in the state of Tennessee; the principal business address, if any, outside the state of Tennessee of the applicant and all addresses within the state of Tennessee at which the applicant is conducting or intends to conduct business;
- If the applicant is other than a corporation, (such as sole proprietorship, general partnership, limited partnership, joint venture, trust or other legal entity), the name and address, as applicable, of the sole proprietor, general partner or partners, joint venturer, grantor or other principal;
- If the applicant is a corporation, the name and address of each executive officer and director, the registered agent for service of process and each stockholder owning or controlling through voting trust or other agreement 10% or more of the outstanding capital stock of the corporation;
- Whether the applicant seeks licensure as a mortgage lender, mortgage loan broker, mortgage loan servicer or any combination of mortgage lender, mortgage loan broker and mortgage loan servicer; and
- Other information that the Commissioner may reasonably request pertaining to the activities of the applicant as a mortgage lender, mortgage loan broker or mortgage loan servicer.

Each applicant for a license must pay a nonrefundable investigation fee at the time of making the application.

As a condition of licensure, each individual who is an officer, partner, managing member, managing principal or branch manager, or possesses control of the applicant, or any other individual associated with the applicant, successfully complete pre-licensure testing or education courses, or both, approved by the Commissioner. This shall not apply to renewals of existing licenses.

### **Background Check and Fingerprints**

The Commissioner is authorized to require an applicant to consent to a criminal history records check and to provide with the application fingerprints in a form acceptable to the Commissioner.

- The commissioner may require the consent and fingerprints from any individual who is an officer, partner, managing member, managing principal, branch manager or ultimate equitable owner of 10% or more of the applicant, as well as from any other individual associated with the applicant.

- No application will be deemed complete until the consent and fingerprints have been submitted.
  - The refusal of any person to consent to a criminal history records check or to provide fingerprints constitutes grounds for the Commissioner to deny licensure to the applicant.

Any criminal history records check will be conducted by the Tennessee Bureau of Investigation or the FBI, or both, and the results of the criminal history records check will be forwarded to the commissioner.

- The reasonable costs incurred in conducting the criminal history records check will be paid by the applicant, in addition to any other required application and investigative fees.

### **Experience Required** (0180-17-11)

The Department of Financial Institutions will not issue a mortgage lender, mortgage loan broker, or mortgage loan servicer license unless the applicant demonstrates at least three (3) years of relevant and substantive experience in the mortgage loan industry.

- Experience is considered relevant if it occurred within the five (5) years preceding the date of application.
- The Department shall deny an application for licensure if the applicant does not provide the Department with satisfactory evidence of experience.
- Experience may be verified with any past or current employers, with taxing authorities, and/or with any other professional references.
- The experience required is a continuing requirement and the failure of a mortgage lender, mortgage loan broker or mortgage loan servicer to maintain the requisite experience (e.g. if the individual demonstrating the company's experience at initial licensure leaves the company) shall constitute grounds to suspend or revoke the license.

An applicant seeking licensure as a mortgage lender and/or mortgage loan broker must demonstrate experience by the individual designated in the application as the "managing principal."

- Upon any change in a mortgage lender's or mortgage loan broker's managing principal, the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new managing principal has the requisite three (3) years' experience in the mortgage loan industry.

An applicant seeking licensure solely as a mortgage loan servicer must demonstrate experience by the single individual identified in the application possessing significant managerial control over the applicant (such as the president or chief executive officer).

- Upon any change in a mortgage loan servicer's designated individual demonstrating the experience required as a condition of continued licensure, request such evidence as it

finds reasonably necessary to verify that the new individual has the requisite three (3) years' experience in the mortgage loan industry.

### **Managing Principals and Branch Managers** (45-13-211)

Each licensed mortgage lender or mortgage loan broker must have:

- A managing principal who operates the business under that person's full charge, control and supervision (Commissioner must be notified of the name of the individual designated, and be provided with the individual's acceptance of the responsibility).
  - Any individual mortgage lender or mortgage loan broker who operates a sole proprietorship shall be considered a managing principal.
- A manager at each principal and branch office of a mortgage lender or mortgage loan broker (Commissioner must be notified of the name of the individual designated, and be provided with the individual's acceptance of the responsibility).
- The responsibility of ensuring that the manager has sufficient experience in the mortgage lending industry to operate the business of the mortgage lender or mortgage loan broker lawfully.
  - The managing principal for a mortgage lender's or mortgage loan broker's business may also serve as the branch manager of one (1) of the mortgage lender's or mortgage loan broker's branch offices.
- Fourteen (14) business days to notify the Commissioner, in writing, of any change in its managing principal or branch manager designated for each branch.

## **LICENSEE QUALIFICATIONS AND APPLICATION PROCESS: MORTGAGE LOAN ORIGINATORS**

### **Issuance of Mortgage Loan Originator License** (45-13-302)

Individuals applying for a mortgage loan originator license must complete and file an application containing the following:

- The individual's name, date of birth, social security number and address;
- The name of any person for whom the individual intends to provide origination services and the address of the office at which the individual will be stationed;
- Information pertaining to the individual's personal history and experience; and
- The individual's authorization for the Commissioner or the NMLS, or both, to obtain:
  - An independent credit report obtained from a consumer reporting agency; and
  - Information related to any administrative, civil or criminal findings by any governmental jurisdiction.
- Fingerprints for submission to the FBI or any other governmental agency or entity, or both, authorized to receive the information (such as the Tennessee Bureau of

Investigation), for a state, national and/or international criminal history background check, as well as authorization for a criminal history background check.

- All costs incurred in conducting the criminal history records check is paid by the applicant, in addition to any other application and investigative fees.

### **Mortgage Loan Originator Sponsorship Required** (45-13-303)

The mortgage loan originator must be sponsored by a licensed mortgage lender or mortgage loan broker or by a registrant in accordance with the Industrial Loan and Thrift Companies Act.

- A mortgage loan originator is prohibited from providing origination services with an inactive license.
- No mortgage loan originator may be sponsored by more than one (1) person at the same time.

To sponsor a mortgage loan originator, a mortgage lender or mortgage loan broker must file a sponsorship form with the commissioner and pay a nonrefundable sponsorship fee.

Upon determining that the individual is duly licensed and not sponsored by any other person, the commissioner shall authorize the sponsorship.

The sponsoring mortgage lender or mortgage loan broker must ensure that:

- each application for a residential mortgage loan contains the name and license number of the mortgage lender or mortgage loan broker,
- each application for a residential mortgage loan contains the name, signature and license number of the mortgage loan originator who provided origination services with respect to the loan.
- its records pertaining to the residential mortgage loan contain the unique identifier, if different from the license number, of each mortgage loan originator that provided services with respect to the loan.

The sponsoring mortgage lender or mortgage loan broker is responsible for and shall supervise the acts of each sponsored mortgage loan originator.

### **Termination of Mortgage Loan Originator Sponsorship** (45-13-303)

A mortgage loan originator sponsorship terminates:

- if the sponsoring mortgage lender or mortgage loan broker's license expires, or is revoked, or otherwise terminates; or
- if the mortgage loan originator ceases providing services for such company.

A mortgage loan originator sponsorship does not terminate if:

- the mortgage loan originator changes from one (1) branch office of the sponsoring mortgage lender or mortgage loan broker to another branch office of the same company.
- the sponsoring mortgage lender or mortgage loan broker notifies the Commissioner in writing within 14 days of the change.

Should a mortgage loan originator sponsorship terminate, the mortgage loan originator's license will become inactive, but will not expire so long as the mortgage loan originator continues to meet the requirements for licensure and renewal of licensure.

- An inactive license is reactivated if the mortgage loan originator obtains a new sponsorship.
- The Commissioner may not approve a new sponsorship unless and until the Commissioner has been notified that any prior sponsorship has terminated.

### **Pre-Licensing Education of Loan Originators** *(45-13-304)*

In order to meet the pre-licensing education requirement, an individual must complete at least twenty (20) hours of education, which shall include at least:

- Three (3) hours of federal law and regulations;
- Three (3) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
- Two (2) hours of training related to lending standards for the nontraditional mortgage product (any mortgage product other than a 30 year fixed rate residential mortgage loan) marketplace;
- Two (2) hours of Tennessee state-specific law and regulations;
- Ten (10) hours of electives.

The pre-licensing education requirements approved by the NMLS for any state will be accepted as credit toward completion of pre-licensing education requirements in Tennessee.

### **Testing of Loan Originators** *(45-13-305)*

The applicant must pass a written test developed by the NMLS and administered by an NMLS approved test provider with a minimum score of 75%.

- If an individual fails to pass the test, the individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test.
- After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again; and

A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer must retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

## **GROUNDS FOR DENYING A LICENSE**

### **Mortgage Lender, Mortgage Loan Broker and Mortgage Loan Servicer** (45-13-203)

The Commissioner may deny a license if the Commissioner finds that the applicant, including its principals:

- Do not have the financial responsibility, experience and character to warrant the belief that the business of the applicant will be operated lawfully and within the purposes of this chapter;
- Do not have a tangible net worth (tangible assets less liabilities) of not less than \$25,000 and an additional tangible net worth of \$25,000 for each additional branch office within this state; and
- Has not paid the non-refundable license fee.

If the Commissioner does not find that the applicant and principals have met the licensing requirements, the Commissioner will deny the application and:

- notify the applicant of the denial,
- give notice of the grounds for the denial, and
- notify the applicant of the right to request a hearing.

If the Commissioner denies an application or if the Commissioner fails to act on an application within 90 days after the filing of a properly completed application, the applicant may make written demand to the Commissioner for a hearing on the question of whether the license should be granted.

The Commissioner must notify the applicant of the date when the application is deemed complete. If the Commissioner denies any application and if the applicant requests a hearing, the Commissioner must conduct the hearing under the Uniform Administrative Procedures Act; provided, that the applicant has requested the hearing in writing within 30 days following the denial of the application by the commissioner. At the hearing, the burden of proving that the applicant is entitled to a license is on the applicant.

### **Loan Originator License** (45-13-302)

No mortgage loan originator license will be issued if:

- The applicant has had a mortgage loan originator license revoked in any governmental jurisdiction;

- The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in any domestic, foreign or military court:
  - During the seven-year period preceding the date of application for a mortgage loan originator license; or
  - At any time preceding the date of application, if the felony involved an act of fraud, dishonesty or a breach of trust or money laundering;
- The applicant has not demonstrated the financial responsibility, character and general fitness to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly and efficiently.
- The applicant has not completed the pre-licensing education requirements; and
- The applicant has not passed a written test.

Upon submission of a properly completed application form, including submission of fingerprints and payment of all applicable fees, the Commissioner will investigate the application to determine whether the applicant qualifies for a license.

- If the Commissioner finds the applicant so qualified, the Commissioner will issue the applicant a mortgage loan originator license that will expire on December 31 in the year it was issued.
- If the Commissioner does not find the applicant so qualified, the Commissioner will notify the applicant in writing, stating the basis for denial.
- If the Commissioner denies an application or fails to act on a complete application within ninety (90) days, the applicant may make a written demand to the commissioner for a hearing on the question of whether the license should be granted.
  - Any hearing requested will be conducted under the Uniform Administrative Procedures Act; provided, that the individual has requested the hearing in writing within thirty (30) days following the date of the Commissioner's denial.
  - At the hearing, the burden of proving that the individual is entitled to a mortgage loan originator license will be on the individual.

## **LICENSE MAINTENANCE** *(45-13-203, 45-13-306)*

### **Mortgage Lenders, Loan Brokers, and Mortgage Servicers License Renewal**

Each license must be conspicuously posted in the respective place of business of the licensee for which the license was issued.

On or before December 31 of each year, each person holding a license must:

- submit a renewal application pay a nonrefundable renewal fee for the following year (commencing January 1),
- file a surety bond adjusted for the dollar value of loans originated during the preceding year.

Failure to timely pay the renewal fee or to timely submit a completed renewal application will cause the license to expire at the close of business on December 31.

As a condition of licensure renewal, the Commissioner may by rule establish continuing education requirements for any officer, partner, managing member, managing principal or branch manager of the applicant.

### **Mortgage Loan Originator License Renewal**

To renew a mortgage loan originator license for the following calendar year, the Commissioner must receive a completed renewal application and fee on or before December 31.

- If the renewal requirements are not timely met, the mortgage loan originator license will expire at the close of business on December 31.

The minimum standards for license renewal for mortgage loan originators include the following:

- Continues to meet the minimum standards for licensure;
- Satisfies the annual continuing education requirements; and
- Pays a nonrefundable renewal fee, which amount may be decreased or increased by rule of the commissioner.

The Commissioner may require a criminal history background check at any time as a condition of continued licensure of a mortgage loan originator.

- Upon request of the Commissioner, a mortgage loan originator must furnish written consent to a criminal history record check and a set of the mortgage loan originator's fingerprints to the Commissioner.
- Failure to provide the consent and fingerprints within thirty (30) days of the Commissioner's request constitutes grounds for the Commissioner to suspend or revoke the mortgage loan originator's license or to deny renewal of the license.

### **Request for Hearing**

Should the Commissioner deny a renewal application, the applicant may make written demand to the Commissioner for a hearing on the question of whether the license should be renewed; provided, that:

- the request for hearing be received by the Commissioner within thirty (30) days from the date of denial; and
- that the failure to timely request a hearing will cause the license to be automatically revoked without further notice or hearing at the end of the thirty-day period.



If a hearing is timely requested, it will be conducted under the Uniform Administrative Procedures Act, and the license will not expire until resolution of the appeal in accordance with the Uniform Administrative Procedures Act.

### **Continuing Education for Mortgage Loan Originators** (45-13-307)

A licensed mortgage loan originator must complete at least eight (8) hours of education approved by the NMLS in order to meet the annual continuing education requirements. The required hours must include at least:

- Three (3) hours of federal law and regulations;
- Two (2) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues; and
- Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

In order to satisfy the continuing education requirement, a licensed mortgage loan originator:

- May only receive credit for a continuing education course in the year in which the course is taken;
- May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
- If the licensed mortgage loan originator is an approved instructor of an approved continuing education course, he/she may receive credit for his/her own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

A person having successfully completed the education requirements approved by the NMLS for any state will be accepted as credit toward completion of continuing education requirements in Tennessee.

### **Personal Information Updates and Required Notifications** (45-13-108, 45-13-205, 45-13-210, 45-13-211, 0180-17-14)

#### Change of Address, Officers, Directors

- Each licensed mortgage lender, mortgage loan broker and mortgage loan servicer must notify the Commissioner five (5) days prior to any change in its principal place of business.
- Each licensed mortgage lender, mortgage loan broker and mortgage loan servicer must notify the Commissioner in writing within fourteen (14) days of any change of its:
  - president,
  - chief executive officer,
  - treasurer or chief financial officer ,
  - general partners,

- managing principal, or
- branch manager(s)

Within fifteen (15) days of the occurrence of any of the following events, a licensee must file a written report with the Commissioner describing the event and its expected impact on the activities of the licensee. The events include:

- The filing for bankruptcy or reorganization by the licensee;
- The launch of revocation or suspension proceedings against the licensee by any state or governmental authority;
- The denial of the opportunity to engage in business by any state or governmental authority;
- Any felony indictment of the licensee or any of its officers, directors or principals;
- Any felony conviction of the licensee or any of its officers, directors or principals; and
- The entry of a publicly available administrative order against the licensee by a state or federal regulatory agency, including, but not limited to:
  - an emergency cease and desist order,
  - an order to cease and desist,
  - an order to pay civil penalties, and
  - an order to make refunds.

### Change of Control

A change in control of a person licensed as a mortgage lender, mortgage loan broker, and/or mortgage loan servicer will require 30 days' prior written notice to the Commissioner.

- In the case of a publicly traded corporation, notification shall be made in writing within 30 days of a change or acquisition of control of a licensee.
- Upon notification of a change in control, the Commissioner may require information deemed necessary to determine whether an application for a license is required.
  - The Commissioner may waive the filing of an application if the change in control does not pose any risk to the interests of the public.
- Whenever control is acquired or exercised, the license shall be deemed revoked as of the date of the unlawful acquisition of control.
  - The licensee, or its controlling person, must surrender the license to the Commissioner on demand.

### **Record Keeping and Reporting** *(45-13-206, 45-13-207, 45-13-208, 45-13-209, 0180-17-12, 0180-17-15)*

#### Records & Financial Statements — Deposits & Periodic Payments — Disclosure

Every licensed mortgage lender, mortgage loan broker and mortgage loan servicer:

- must keep and maintain in its principal place of business correct and complete records of all residential mortgage loan transactions arranged by the licensee at all times.
- must prepare the financial statements furnished to the Commissioner in accordance with generally accepted accounting principles consistently applied.
  - Financial statements must show compliance with the net worth requirements
    - Financial statements must include, but are not limited to:
    - an income statement,
    - balance sheet,
    - statement of cash flows, and
    - relevant disclosures.

If a deposit is required in connection with an application for a residential mortgage loan, there must be a written agreement, signed by the parties, pertaining to the disposition of the deposit, whether the loan is finally consummated or not, and the term for which the agreement is to remain in force before return of the deposit for nonperformance can be required.

- A licensee who receives deposits shall preserve and on request make available to the Commissioner all information related to the deposits.
- The licensee shall further preserve all agreements between the parties involved in the transaction and all contracts, agreements and instructions pertaining to the transaction.

#### Preservation of Records — Reproduction — Maintenance Location

All books and records required to be preserved by any regulation of the Commissioner or required by any federal statute, regulation or regulatory guideline, as applicable to each licensed mortgage lender, mortgage loan broker and mortgage loan servicer, must be preserved and made available to the Commissioner upon request. The required retention period is determined by the Commissioner and not to exceed:

- 25 months on all rejected applications, and
- 24 months on loans paid in full.

The licensee may reproduce or preserve his/her records by any microphotographic process, electronic or mechanical data storage technique or any other means.

- Any record reproduced or preserved by those processes, techniques or means will have the same force and effect as the original record, and be admitted into evidence equally with the original.

Any licensee, after receiving the prior written approval of the Commissioner, may maintain records at any location within or outside of the state of Tennessee.

#### Minimum Information — Annual Report

Each licensee must file an annual report with the Commissioner giving information concerning the business and operations during the preceding calendar year of the licensee. The annual report shall be on a form prescribed by the commissioner by regulation.

In addition to annual reports, the Commissioner may require additional regular or special reports as deemed necessary for the proper supervision of licensees.

The required annual report and statements must include:

- the names of all directors, officers, general partners and stockholders owning or controlling 25% or more of the outstanding capital stock of the licensee,
- the names of any limited partners owning more than 25% of the partnership interest of the licensee,
- any changes among officers, directors or general partners within the preceding year, and
- any change in the principal place of business of the licensee.

#### Statement of Account

Upon written request from the mortgagor, the holder of a residential mortgage loan must deliver to the mortgagor, within 14 days from receipt of the written request, a statement of the mortgagor's account showing the date and amount of all payments credited to the account within the previous 12 month period and the total unpaid balance. Not more than two statements shall be required in any 12 month period.

- If the holder of a residential mortgage loan forwards to the mortgagor an annual payment and escrow analysis, or other such analysis, the submission of the analysis to the mortgagor shall constitute a statement of the mortgagor's account.

#### Mortgage Call Reports

Each person holding a license must submit to the NMLS reports of condition as required.

## Compliance and Disciplinary Action

### COMPLIANCE

#### **Prohibited Conduct and Practices** (45-13-401)

It is a violation for any person subject to the Act to:

- Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- Solicit or enter into a contract with a borrower that provides in substance that the person may earn a fee or commission through best efforts to obtain a residential mortgage loan even though no loan is actually obtained for the borrower;
- Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms, unless the terms are actually available at the time of soliciting, advertising or contracting;
- Conduct, assist, or aide and abet any person in the conduct of business without a valid license;
- Fail to comply with the Act or any rules and regulations under it;
- Contract and/or collect interest on a residential mortgage loan at a rate in violation of the maximum effective rate of interest applicable to the contract, as established by Tennessee Code;
- Fail to comply with any other state or federal law, or rules or regulations applicable to any mortgage lending business including, but not limited to:
  - the Real Estate Settlement Procedures Act (RESPA)
  - the Truth In Lending Act (TILA), and
  - the Equal Credit Opportunity Act (ECOA);
- Make any false or deceptive statement or representation to a borrower or potential borrower with regard to:
  - the rates, points or other financing terms or conditions for a residential mortgage loan, or
  - engaging in bait and switch advertising;
- Make any false statement or material omission in connection with:
  - any information reported to or filed with the Commissioner or with the NMLS
  - any examination or investigation conducted by the Commissioner;
- Fail to accurately account for moneys belonging to a party to a residential mortgage loan transaction;
- Fail to disburse funds in accordance with a written agreement;
- Obtain any agreement or instrument in which blanks are left to be filled in after execution;
- Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;
- Intimidate a real estate appraiser or influence an appraiser's report relating to market conditions or determination of value;
- Refuse to permit the Commissioner to make an examination; or

- Assign or attempt to assign any mortgage license.

**Fees and Charges** (0180-17-01, 0180-17-02, 0180-17-05, 0180-17-06, 0180-17-07, 45-13-403)

Brokerage/Finder Fee (0180-17-01, 0180-17-07)

A fee charged by a mortgage loan broker or residential mortgage lender that is paid by or charged to a loan applicant for mortgage loan origination in which no part of the fee is for service rendered by a third party provider.

- Licensees that charge or pay a brokerage/finder fee must provide a schedule of fees paid or charged in their filing papers and cannot alter those charges without 30 days prior written notice to the Department of Financial Institutions.
- A brokerage/finder fee of 2% or less of the principal amount of the residential mortgage loan is considered fair and reasonable.
- A brokerage/finder fee that is more than 2% of the principal amount of the loan is presumed unfair and unreasonable and will be grounds to revoke the license of the licensee, unless evidence can be provided showing that the fee constitutes fair and reasonable compensation.

Fees Paid to Third Persons (0180-17-01, 0180-17-02)

The bona fide fees or charges paid by the applicant for a residential mortgage loan to:

- third persons other than the mortgage lender or mortgage loan broker, or
- the mortgage lender or mortgage loan broker for transmittal to such third persons in connection with the residential mortgage loan, including, but not limited to:
  - mail service charges,
  - tax service charges,
  - recording taxes and fees,
  - reconveyance or releasing fees,
  - appraisal fees,
  - credit report fees,
  - attorney fees,
  - fees for title reports and title searches,
  - title insurance premiums,
  - surveys and similar charges.

All moneys received by a licensee from an applicant for fees paid to third persons must be accounted for separately (such as by use of the HUD-1 Settlement Statement), and all disbursements for fees paid to third persons must be supported by adequate documentation of the services for which such fees were or are to be paid.

### Commitment Fee (0180-17-01, 0180-17-05)

Any fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender:

- as consideration for binding the mortgage lender to make a residential mortgage loan in accordance with the terms of the commitment, or
- as a requirement for acceptance by the applicant of a commitment.

A commitment fee does not include interest or fees paid to third persons.

A failure by a licensee to return a commitment fee to an applicant pursuant to the terms of its agreement with the applicant will constitute grounds to revoke the license of the licensee.

### Lock-In Fee (0180-17-01, 0180-17-06)

A fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement.

A lock-in fee does not include interest or fees paid to third persons.

A failure by a licensee to return a lock-in fee to an applicant pursuant to the terms of its agreement with the applicant will constitute grounds to revoke the license of the licensee.

### Payments to Contractor from Proceeds of Mortgage Loan for Home Improvement (45-13-403)

A licensed mortgage lender or mortgage loan broker may not make any payments to a contractor or home improvement contractor from proceeds of a mortgage loan for home improvement (a consumer credit mortgage loan transaction involving property located within Tennessee) regardless of the amount of the loan other than:

- In the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor or home improvement contractor; or
- At the election of the borrower by a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the licensee and the contractor or home improvement contractor prior to the date of payment.

A licensed mortgage lender or mortgage loan broker may not permit a contractor or home improvement contractor to be a cosigner or to act as a guarantor for a mortgage loan for home improvement.

The Commissioner is authorized to impose a civil penalty in an amount not to exceed \$25,000 for each violation after notice and opportunity for a hearing.

## **Disclosures and Agreements**

### Notice of Mortgage Transfer (0180-17-03)

A transferor of servicing rights under a residential mortgage loan must give the mortgagor under the loan written notice of the transfer of servicing rights. The notice must:

- specify the name and address to which future payments are to be made, and
- must be mailed or delivered to the mortgagor at least ten (10) calendar days before the first payment affected by the notice is due.
  - The mortgagor under the loan will be entitled to continue to make payments to the transferor of the servicing rights until the mortgagor is given the notice.
  - Neither the transferor nor the transferee of the servicing rights will be entitled to enforce any penalties for late payment or non-payment against the mortgagor based on such continuation.

### Lock-In Agreement (0180-17-01, 0180-17-04)

A lock-in agreement is a written agreement between a mortgage lender and an applicant for a residential mortgage loan that establishes and sets an interest rate, discount points, and lock-in fees to be charged in connection with a residential mortgage loan that is closed within the time period specified in the agreement.

A lock-in agreement can be entered into before a residential mortgage loan approval, subject to a residential mortgage loan being approved and closed, or after a residential mortgage loan approval.

A lock-in agreement must include the following:

- The interest rate and discount points to be paid by the applicant on the residential mortgage loan
  - If the residential mortgage loan has an adjustable interest rate, the initial interest rate to be paid by the applicant on the residential mortgage loan must be included;
- The amount of any lock-in fee and the time within which the lock-in fee must be paid;
- The length of the lock-in period;
- A statement that if the residential mortgage loan is not closed within the lock-in period:
  - the mortgage lender will no longer be obligated by the lock-in agreement and
  - any lock-in fee paid by the applicant may not be refundable except under certain conditions (the conditions do not have to be specified);
- A statement that any terms not locked in by the lock-in agreement are subject to change until the residential mortgage loan is closed at settlement; and
- Any other terms and conditions of the lock-in agreement required by the mortgage lender.

### Deposit Agreement (45-13-206)



If a deposit is required in connection with an application for a residential mortgage loan, there must be a written agreement, signed by the parties, specifying:

- the disposition of the deposit, whether the loan is finally consummated or not, and
- the term for which the agreement is to remain in force before return of the deposit for nonperformance can be required.

A licensee who receives deposits must preserve and, on request, make available to the commissioner:

- all information related to the deposits.
- all agreements between the parties involved in the transaction and
- all contracts, agreements and instructions pertaining to the transaction.

### **Commercial Instruments and Transactions** *(Title 47 - Chapter 15)*

As used in this rule, a Home Loan means a loan which is:

- Secured by real estate owned and occupied by the borrower for family residential purposes and which may include not more than three (3) additional residential units; and
- Amortized over a period greater than one hundred eighty-one (181) months; and

### Maximum Rates

The maximum effective rate of interest per annum for home loans is:

- Two (2) percentage points above the most recent weighted average yield of the accepted offers of the FNMA's current free market system auction for commitments to purchase conventional home mortgages (FNMA Auction) as determined pursuant to §47-15-103.
- In the event the FNMA discontinues the conduct of the auction, the maximum effective rate of interest per annum for home loans will be set at an amount equal to four (4) percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the department of the treasury.
- The maximum effective rate of interest per annum for home loans will not, in any event, exceed eighteen percent (18%) per annum.

### Determination and Publication of Rates

The maximum interest rate for home loans is determined by the Commissioner on or before the 20<sup>th</sup> of each month and remains in effect until the following month.

- The Commissioner will promptly make an official announcement of such rate and publish the announcement in the Tennessee Administrative Register.

- The rate shall remain in effect until the next official announcement and publication.

### Contract Provisions

Home loan contracts may provide for the payment of a fixed rate of interest, a variable rate of interest, or any combination of fixed and variable rates in any sequence.

A contract may provide for a fixed rate of interest:

- Permissible at the time the contract to make the loan is executed;
- Permissible at the time the loan is made;
- Permissible at the time the interest rate on the loan is converted from a variable to a fixed rate, or from one fixed rate to another fixed rate, whether such conversion is by terms of the contract or by renewal, modification, extension or otherwise;
- Permissible at the time of any renewal or extension of the loan or any note evidencing the loan; or
- Permissible by virtue of any combination of any of the foregoing.

A contract may provide for a rate of interest that may vary from time to time at such regular or irregular intervals as may be agreed by the parties; provided, that such variable rate does not exceed the greater of:

- That authorized by statute at the agreed time of each variance; or
- That authorized at the time of execution of the contract or note evidencing the indebtedness upon which such variable rate is or is to be charged.

The parties may agree to a minimum fixed rate of interest to be applicable to a rate which is or may become otherwise variable; provided, that such agreed minimum fixed rate of interest does not exceed the rate permitted at:

- the time the contract to make the loan is executed,
- the time the note is executed, or
- the time of any renewal or extension thereof, whichever is greater.

### **Advertising** (45-13-402)

It is unlawful for any person to place or cause to be placed any false or misleading advertising matter pertaining to mortgage loans or the availability of mortgage loans.

The owner, publisher, operator or employees of any publication or radio or television station that disseminates the advertising matter cannot be held liable for the advertising content.

### **DISCIPLINARY ACTION**

## **Violations — Cease and Desist Orders — Penalties** (45-13-405)

If, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Act or any administrative rules, the Commissioner may take any or all of the following actions:

- Order the person to cease and desist violating the Act or any administrative rules;
- Require the refund of any interest, fees or charges collected by the person in violation of the Act or any administrative rules;
- Order the person to pay the Commissioner a civil monetary penalty of not more than \$10,000 for each violation of the Act or any administrative rules;
- Suspend or revoke any license;
- Deny an application for licensure or refuse to renew a license.

The Commissioner may also, after notice and opportunity for a hearing, suspend or revoke any license issued under this chapter for failure to maintain the requirements for licensure.

When a licensee is accused of any act, omission or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commissioner. A person who surrenders a license will not be eligible for or submit any application for a license for a period of time established by the Commissioner.

A licensee is subject to disciplinary action for any person who acts on behalf of the licensee, which includes any:

- officer,
- director,
- person owning twenty-five percent (25%) or more of the licensee's outstanding capital,
- member,
- partner,
- managing principal,
- branch manager,
- mortgage loan originator, or
- employee.

## **Consent Orders** (45-13-406)

The Commissioner may enter into consent orders at any time with any person to resolve any matter arising under the Act. A consent order:

- must be signed by the person to whom it is issued, or a duly authorized representative,
- must indicate agreement to the terms contained in the consent order.

A consent order need not constitute an admission by any person that the Act or any rule and/or regulation has been violated, nor need it constitute a finding by the Commissioner that the person has violated the Act or any rule and/or regulation.

The commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any enforcement action authorized by the Act by issuing a temporary emergency order without providing the opportunity for a prior hearing. In such cases the Commissioner will promptly afford a subsequent hearing upon an application to rescind the emergency order that is filed with the Commissioner within 20 days after receipt of the notice of the Commissioner's emergency action. If no such appeal is timely filed, the temporary emergency order of the Commissioner shall become final.

### **Bar from Industry** (45-13-407)

If the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions or duties of a person engaged in the mortgage lending business, the Commissioner, after notice and opportunity for hearing, may censure, suspend or bar a person from any position of management, control, employment in the mortgage lending business, if the Commissioner finds that:

- The censure, suspension or bar is in the public interest and that the person has committed or caused a violation of this chapter or any rule, regulation or order of the commissioner; or
- The person has been:
  - Convicted of or pled guilty to or pled nolo contendere to any crime; or
  - Held liable in any civil action by final judgment or any administrative judgment by any public agency.

Persons suspended or barred are prohibited from participating in any business activity of a registrant or licensee and from engaging in any business activity on the premises where a registrant or licensee is conducting its business.

A person suspended or barred may have personal transactions processed by a registrant or licensee.

## Other Tennessee Mortgage Laws

### **Tennessee Home Loan Protection Act (Title 45 - Chapter 20)**

This Act (HPLPA) protects consumers from predatory mortgage lending practices and sets specific standards and prohibitions for high-cost home loans.

#### **DEFINITIONS** (45-20-102)

##### **High-Cost Home Loan**

A home loan in which the terms of the loan meet or exceed the rate threshold or the total points and fees threshold.

##### **Home Loan**

A loan in which:

- The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established by the FNMA, or \$350,000;
- The debt is incurred primarily for personal, family, or household purposes;
- The loan is secured by a mortgage or deed of trust on real estate in Tennessee, upon which there is located or there is to be located a structure:
  - Designed principally for occupancy by one (1) to four (4) families; and
  - That is or will be occupied by a borrower as the borrower's principal dwelling;

A home loan does not include:

- Any residential mortgage transaction as defined in Regulation Z (12 CFR 226.2(a)(24) – a transaction in which a mortgage, deed of trust, or purchase money security interest arising under an installment sales contract, or equivalent consensual security interest, is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling);
- An open-end credit loan;
- A reverse mortgage transaction;
- A construction loan; and
- Any loan that is insured or guaranteed by, securitized for, or sold to a government agency, including:
  - the Department of Housing and Urban Development,
  - the Department of Veteran Affairs,
  - the Tennessee Housing Development Agency, or
  - the United States Department of Agriculture;

## Rate Threshold

When the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a mortgage under the Home Ownership Equity Protection Act of 1994 (HOEPA).

- First, determine if a transaction is a high-cost mortgage based on its APR. A transaction is a high-cost mortgage if its APR (measured as of the date the interest rate for the transaction is set) exceeds the Average Prime Offer Rate (APOR) for a comparable transaction on that date by more than:
  - 6.5 percentage points for first-lien transactions, generally
  - 8.5 percentage points for first-lien transactions that are for less than \$50,000 and secured by personal property (e.g., RVs, houseboats, and manufactured homes titled as personal property)
  - 8.5 percentage points for junior-lien transactions
- An APOR is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. {12 CFR 1026.32(a), 12 CFR 1026.35(a)}

## Total Points and Fees Threshold

The total points and fees payable by the borrower at or before the loan closing that exceed:

- The greater of 5% of the total loan amount or \$2,400, if the total loan amount is more than \$30,000; or
- 8% of the total loan amount, if the total loan amount is \$30,000 or less.

## PROHIBITED ACTS and PRACTICES (45-20-103)

The following acts and practices are prohibited in the making of a high-cost home loan:

- No lender may recommend or encourage default or skipping a payment on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt;
- A lender or servicer of a high-cost home loan must provide a borrower or the borrower's designated agent, upon request, two (2) pay-off statements within any twelve month period, free of charge. The statement shall be valid for a minimum of fifteen (15) days;
  - The lender may require that any request for a pay-off statement be sent in writing, by facsimile, or other electronic means, to a designated address or location, and contain sufficient information to identify the loan, including the name of the borrower as listed on the loan documents and the loan number;
  - A request for a pay-off statement sent to the location designated by the lender or servicer shall be provided within five (5) business days after an authorized request, plus any required fee, is received by the lender; and

- A lender or servicer may charge a reasonable fee for any additional requests for a pay-off statement during the twelve-month period;
- No lender or servicer can charge a fee to provide a release upon prepayment of a High-cost home loan, except for the actual cost paid to record the release;
- No lender may knowingly or intentionally make a high-cost home loan that refinances, within 30 months, an existing home loan or high-cost home loan of the borrower, when the new loan does not have a reasonable benefit to the borrower, considering all the circumstances, including:
  - the terms of both the new and refinanced loans,
  - the economic and non-economic circumstances,
  - the cost of the new loan, and
  - the borrower's circumstances;
- No lender may make a high-cost home loan that finances, directly or indirectly, any:
  - single premium credit life insurance,
  - credit accident,
  - credit disability,
  - credit unemployment,
  - credit property or health insurance
  - other credit insurance product, or payments directly or indirectly for any debt cancellation or suspension agreement or contract, unless:
    - the total benefits payable under all of the policies or contracts issued in connection with the loan do not exceed \$50,000,
    - the principal amount of financed premiums for the policy or contract are repayable during the term of the policy or contract, and
    - the amount payable under the credit life insurance policy are not at any time during the term of the loan more than 103% of the then unamortized principal balance of the loan.
  - This rule does not prohibit:
    - the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis, or
    - bona fide credit property insurance (property insurance written in connection with credit transactions under which the lender is the primary beneficiary) required by the federal housing administration or the United States Department of Agriculture to be paid in a single premium to the respective federal agency.
- A lender may not make a high-cost home loan, unless the lender reasonably believes at the time the loan is made that one (1) or more of the borrowers, when considered individually or collectively, will be able to make scheduled payments to repay the obligation, based upon consideration of their:
  - current and expected income,
  - current obligations,
  - employment status, and
  - financial resources, other than the borrower's equity in the dwelling that secures repayment of the loan;

- A borrower will be deemed to be able to make the scheduled payments to repay the high-cost home loan, if, at the time the loan is consummated, the borrower's total monthly debts, as identified on the borrower's credit report and as computed by the lender's underwriting guidelines and methodology, including amounts owed under the loan, do not exceed 50% of the borrower's monthly gross income:
  - As verified by the credit application, the borrower's financial statements, tax returns, payroll receipts or third party income verification; and,
  - As underwritten in accordance with the lender's underwriting guidelines and methodology; and
  - No presumption of inability to make the scheduled payments to repay the high-cost home loan shall arise solely from the fact that, at the time the loan is consummated, the borrower's total monthly debts, including amounts owed under the loan, exceed 50% of the borrower's monthly gross income;
- No lender may directly or indirectly finance, in connection with any high-cost home loan, any points and fees in excess of an amount that is the greater as follows:
  - For loans over \$30,000
    - 3% of the total loan amount or
    - \$1,500,
  - For loans under \$30,000
    - 5% of the total loan amount,
- A lender may not charge a borrower points and fees in connection with a high-cost home loan, if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan with the same lender or affiliate of the lender.
  - This will not prohibit a lender from charging points and fees in connection with any additional proceeds (the amount over and above the amount required to pay off the existing high-cost home loan) received by the borrower in connection with the refinancing.
- No prepayment fees or penalties may be provided in the loan documents for a high-cost home loan, or charged a borrower, that exceed, in aggregate, 2% of the loan amount prepaid in the first 24 months following the loan closing;
  - No prepayment fees or penalties may be provided in the loan documents or charged a borrower in a refinancing of a high-cost home loan, if the lender or an affiliate of the lender is the note holder of the note being refinanced; and
  - Any refund of unearned interest is calculated in a method that is not as favorable to the consumer as the prorated method will be prohibited;
- No lender may make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of the earlier scheduled payments.
  - This does not apply when the payment schedule is adjusted to the seasonal or irregular income of a borrower;
- No lender may make a high-cost home loan that contains a payment schedule with regular periodic payments that cause the principal balance to increase;
- No lender may make a high-cost home loan that contains a provision that permits the lender, in its sole discretion, to accelerate the indebtedness.



- This does not apply when repayment of the loan has been accelerated by default in the terms of the note or deed of trust;
- No lender may make a high-cost home loan that includes terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
- No lender may make a high-cost home loan that contains a provision that increases the interest rate after default.
  - This does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents; provided, that the change in the interest rate is not triggered by the event of default or acceleration of the indebtedness;
- No lender may make a high-cost home loan that provides for a late payment fee, except as follows:
  - The late payment fee shall not be in excess of 5% of the amount of the payment past due or \$15.00, whichever is greater;
  - The late payment fee shall only be assessed for a payment past due for 10 days or more; and
  - The late payment fee shall not be imposed more than once with respect to a single late payment; and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment, but for the previous default or the imposition of the previous late payment fee;
- A lender shall not make a high-cost home loan unless the lender has given the following written notice, in at least 12 point bold type, to the borrower, acknowledged in writing and signed by the borrower, not later than the time the notice is required:

*NOTICE TO BORROWER*

*YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT.*

*IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.*

*YOU SHOULD CONSULT A QUALIFIED INDEPENDENT CREDIT COUNSELOR*

*OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN*

*DEVELOPMENT (HUD) MAINTAINS A LIST OF CREDIT COUNSELORS IN YOUR AREA. YOU MAY OBTAIN HUD'S LIST OF CREDIT COUNSELORS BY CONTACTING HUD DIRECTLY OR BY CONTACTING THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS.*

*YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.*

*ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING LENDERS;*

- A lender may not present a borrower with a high-cost home loan at closing with a materially different interest rate, term, type of loan, or settlement charges from the settlement charges disclosed on the last disclosures required by the Real Estate Settlement Procedures Act (the total settlement charges disclosed on the final settlement statement would exceed the previously last disclosed settlement charges by an amount equal to more than fifteen percent (15%) in the aggregate), without re-disclosure not less than one (1) day before closing.
  - A high-cost home loan may not be closed in a location other than:
    - an office of the lender,
    - at the office of any attorney at law licensed to practice in Tennessee,
    - at the office of a title insurance company or title insurance agency licensed to do business in Tennessee,
    - the office of a settlement or closing agent, or
    - the commercial office of a mortgage broker;
- A lender or its servicer must report, at least quarterly, both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a high-cost home loan to a nationally recognized consumer credit reporting agency;
- Each mortgage or deed of trust securing a high-cost home loan must state on the face of the instrument the following legend prominently displayed: "This instrument secures a high-cost home loan, as defined in Tennessee Code Annotated, Title 45"; and
  - Each note that meets the definition of a high-cost loan must also include the statement
- No lender, in connection with a high-cost home loan, may encourage or solicit any person to execute any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document for a high-cost home loan, if any

material terms of the loan or transaction, including, but not limited to, the duration, interest rate, or fees, are omitted or incomplete;

- No person, in connection with a high-cost home loan, may modify, including, but not limited to, any alteration or change, any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document, after the execution of the document, unless the modification is with the consent of the person or persons affected by the change and the consent is in writing, or the modification is authorized by a valid power of attorney authorizing the modification. A power of attorney is valid for this purpose, if it specifically includes the type or nature of the modification; and
- No person, in connection with a high-cost home loan, shall encourage, solicit, or conspire with any other person to violate the Act; and
- A lender may not make a high-cost home loan without first providing to the borrower, in a separate document clearly identified, notice of availability of counselors from third-party nonprofit organizations approved by the United States Department of Housing and Urban Development (HUD), a housing financing agency of this state, or the regulatory agency that has jurisdiction over the lender. The document must provide either:
  - a list of counselors who are located in the county of the borrower or the nearest available county where counselors are available; or
  - a resource list for HUD, Tennessee Housing and Development Agency or the Tennessee Department of Financial Institutions, including toll-free numbers and web site information, if available, to identify the counselors.
    - The borrower must be afforded the opportunity to seek counseling without penalty.

### **Cure of Default — Foreclosure** *(45-20-104)*

If a lender or servicer asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument of a high-cost home loan, the borrower, or anyone authorized to act on the borrower's behalf, will have the right at any time, prior to three (3) business days prior to a foreclosure sale, to cure the default and reinstate the home loan by tendering the amount or performance.

Cure of default will:

- reinstate the borrower to the same position as if the default had not occurred and
- nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

A notice of the right to cure the default will be sent to the borrower in not less than 30 days prior to publishing notice of foreclosure, or commencing an action for judicial foreclosure, informing the borrower of the following:

- The nature of default claimed on the home loan, and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary

to cure the default will change during the 30 day period after the effective date of the notice, due to the application of a daily interest rate or the addition of late fees, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 30 day period;

- The date by which the borrower must cure the default to avoid acceleration and initiation of foreclosure, or other action to seize the home, which date must not be less than 30 days after the date the notice is sent, and the name and address and telephone number of a person to whom the payment or tender must be made;
- That if the borrower does not cure the default by the date specified, steps may be taken to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the home; and
- The name and address of the lender or servicer and the telephone number of a representative of the person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

To cure a default, a borrower must not be required to pay any Charge, fee or penalty attributable to the exercise of the right to cure a default, other than the fees specifically allowed by this rule.

- During the cure period, the borrower will be liable for any expenses actually incurred to preserve, maintain, or protect the property or the security interest of the lender that are otherwise permitted in the note or deed of trust, or other loan documents.
- After a lender publicly files a notice of foreclosure or takes other action to seize or transfer ownership of the home, the borrower shall be liable for attorney's fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours and reasonable cost for publishing notice of and conducting the foreclosure sale.

A borrower's right to cure a default prior to commencing a foreclosure proceeding may not be invoked more than once in any 12 month period.

### **Purchaser or Assignee Liability — Due Diligence** *(45-20-105)*

Any person who purchases or is otherwise assigned a high-cost home loan will be subject to all claims and defenses with respect to the high-cost home loan that the borrower could assert against the lender of the high-cost home loan, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that due diligence was exercised to avoid violating the HLPA.

### **Actions Prohibited— Open-End Credit Plan** *(45-20-106)*

No person may, with the intent to avoid the application or provisions of the HLPA:

- Divide a loan transaction into separate parts;
- Structure a loan transaction as an open-end credit plan when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or
- Engage in any other subterfuge.

An “open-end credit plan” means “open-end loan” under which:

- The creditor contemplates repeated transactions
- A finance charge may be charged on the outstanding balance
- The amount of available credit is based on the amount of the outstanding balance that has been repaid

## **COMPLIANCE and DISCIPLINE**

### **Penalties — Punitive Damages — Remedies — Limitations — Frivolous or Harassment Actions — Notice of Action** *(45-20-107)*

Any lender found to have violated the HLPA will be subject to the following:

- The making of a high-cost home loan that violates the HLPA is subject to the following penalties:
  - Actual damages;
  - For willful or intentional violations, statutory damages equal to the amount of all finance charges and fees paid by the borrower and forfeiture of the remaining interest under the loan; and
  - Costs and reasonable attorney's fees.
- The collecting or servicing of a high-cost home loan that violates the HLPA is subject to the following penalties:
  - Actual damages;
  - For willful or intentional violations, statutory damages equal to the amount of all finance charges and fees paid by the borrower; and
  - Costs and reasonable attorney's fees.
- Punitive damages may be awarded where the court finds that the violation is malicious or reckless.
  - Punitive damages will be limited to three (3) times the actual damages and the amount of all finance charges and fees paid by the borrower, exclusive of costs and reasonable attorney's fees.
- Any other remedies available to a borrower under applicable law.
- Any action against a licensee must be brought within three (3) years from the date the borrower discovered or should have discovered the violation.
  - This does not bar a borrower from asserting a violation as a defense in an action to collect the debt that was brought more than three (3) years from the date of occurrence of the violation as a matter of defense by recoupment or set-off in the action.

- Upon finding that the action is frivolous or brought for the purpose of harassment, the court may require the borrower instituting the action to indemnify the defendant for reasonable attorney's fees and costs.
  - To assert a claim, the lender or servicer must file a motion with the court and provide at least 15 days after service in which the borrower may respond to deny, withdraw, or amend the complaint.
  - Notice of the action by copy shall be filed simultaneously with the Department of Financial Institutions.

**Compliance Failure** (45-20-108)

A lender or servicer of a high-cost home loan who, when acting in good faith, fails to comply with the HLPA will not be deemed to be in violation, if the lender or servicer establishes that either:

- Within 30 days of discovery and prior to the institution of any action:
  - The borrower is notified of the compliance failure;
  - The lender or servicer has made appropriate restitution to the borrower;
    - “appropriate restitution” means the reimbursement by the lender of any points and fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as the borrower would have been had the loan been originally made
  - The lender or servicer makes whatever adjustments are necessary to the loan so that the loan will no longer be considered a high-cost home loan subject to the provisions the HLPA; and
  - The lender or servicer makes whatever adjustments or refunds and/or takes action necessary to cure the violation, by affording the borrower the rights and benefits provided under the provisions of the HLPA.
- If the compliance failure was not intentional and resulted from a bona fide error, despite the procedures even though procedures were in place to avoid such errors, the remedial steps must be taken within 60 days after the discovery of the failure and prior to the initiation of any action under the HLPA

Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors.

**Commissioner's Powers — Rules and Regulations — Examinations and**

**Investigations — Injunctions** (45-20-108)

The Commissioner has the power to:

- interpret the provisions the HLPA and to enact reasonable substantive and procedural rules as are necessary and proper for its administration, enforcement and interpretation.

- conduct examinations and investigations of the business and the books, accounts, records and files used in the business of each person in order to ensure compliance with the HLPAs and recover any actual costs incurred in that regard
- subpoena witnesses, compel their attendance, require the production of evidence, administer oaths and examine any person under oath in connection with the enforcement of the provisions of the HLPAs.

If, after notice and opportunity for a hearing, the Commissioner determines that a person has violated the provisions of the HLPAs, the Commissioner may take any or all of the following actions:

- Order the person to cease and desist the prohibited act;
- Order a person to make restitution for actual damages to borrowers;
- Impose a civil penalty of up to \$10,000 for each violation;
- Suspend, revoke, or refuse to renew any license or;
- Censure, suspend or bar an individual from any position of management, control, employment or other capacity related to regulated activities;
- If the Commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, the Commissioner may, before completion of an investigation or any formal proceeding, enter an emergency order to be effective immediately and until entry of a final order. In cases requiring immediate action, the Commissioner shall promptly afford a subsequent hearing upon application to rescind the action taken. The emergency order may include:
  - a temporary suspension of the lender's authority to make high-cost home loans,
  - a temporary cease and desist order,
  - a temporary prohibition against a lender transacting high-cost home loan business in Tennessee, or
  - another order relating to high-cost home loans that the commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding.; or
- Impose other conditions that the commissioner deems appropriate.

In the event a person does not comply with an order or subpoena for documents or testimony, the Commissioner may bring an action in the chancery court of Davidson County to:

- seek injunctive relief to compel compliance with the order.
- enjoin any act or practice that constitutes a violation of the HLPAs, or any of its administrative rules.
  - The court may not require the Commissioner to post a bond in bringing the action.
  - Upon a proper showing by the Commissioner, the court will grant a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement, or other proper equitable relief, including the recovery by the Commissioner of costs and attorney's fees.

## **Home Equity Conversion Mortgage Act (Title 47 – Chapter 30)**

This Act (HECMA) provides the parameters, terms and conditions under which reverse mortgage loans may be made in the state of Tennessee

### **DEFINITIONS** (47-30-102)

#### **Authorized Lender or Lender**

- A bank, savings and loan association, savings bank, savings institution, or credit union chartered under the laws of the United States or of Tennessee;
- The Tennessee Housing Development Agency (THDA); or
- Any other person authorized to make home equity conversion loans by the Commissioner.

#### **Home Equity Conversion Mortgage Loan or Reverse Mortgage Loan**

A loan for a definite or indefinite term:

- Secured by a first mortgage or first deed of trust on the principal residence of the mortgagor;
- The proceeds of which are disbursed to the mortgagor in one (1) or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent;
- That requires no repayment until a future time, upon the earliest occurrence of one (1) or more events specified in the reverse mortgage loan contract; and
- Is labeled clearly on the face of the note and deed of trust or mortgage:
  - if it is a HUD Loan, "This is a Home Equity Conversion Mortgage Loan pursuant to Tennessee Code Annotated, Title 47, Chapter 30,"
  - if it is a Fannie Mae Reverse Mortgage Loan, contains on the face of the note and deed of trust or mortgage the words "Home Keeper Mortgage" or "Fannie Mae Reverse Mortgage" .

#### **Reverse Mortgage**

A mortgage or deed of trust securing a home equity conversion loan or reverse mortgage loan.

### **COMPLIANCE**

#### **Authorized Lenders - Designation – Application** (47-30-103)



No person, firm, or corporation can engage in the business of making reverse mortgage loans, unless such person, firm, or corporation is an authorized lender.

A person must provide notice to the Commissioner of their intent to make home equity conversion loans or reverse mortgage loans at least 30 days in advance. The notice must include the following:

- The name and complete business address or addresses of the applicant and contain evidence that the applicant is an approved Fannie Mae or HUD lender.
- Such information the commissioner deems necessary to evaluate the applicant. Including, but not limited to:
  - affirmation of financial solvency,
  - all capitalization requirements that are required by the Commissioner, and
  - the character, personal experience and business plan of the applicant.

The application shall be accompanied by a nonrefundable fee.

#### **Compliance – Non-Complying Loans Unenforceable - Counseling** (47-30-104)

No authorized lender may issue a reverse mortgage loan contract unless:

- it complies with all requirements for participation in HUD's Home Equity Conversion Mortgage Program (or other similar federal reverse mortgage loan program from time to time created)
- is insured by the federal housing administration or other similar federal agency, or
- is a Fannie Mae Reverse Mortgage Loan.

Any home equity conversion loan, reverse mortgage loan, mortgage or deed of trust which fails to comply with the HECMA is unenforceable as to all interest, service fees, and insurance premiums incurred on the loan.

Prior to accepting an application for a home equity conversion loan, an authorized lender must refer the borrower to a counselor and must receive certification from the counselor that all borrowers have received counseling.

#### **Contract for the Payment of Interest** (47-30-105)

The parties to a reverse mortgage loan may contract for the payment of interest at a rate which does not exceed the legal rate permitted for home.

Interest shall be deferred until the earliest occurrence of one (1) or more events specified in the reverse mortgage loan contract.

Payment of interest on deferred interest must be as agreed upon by the parties to the contract.

The parties may agree that the deferred interest may be added to the outstanding balance of the loan.

**Contract May Require Borrower to Pay Certain Taxes, Premiums and Assessments** (47-30-106)

A reverse mortgage loan contract may provide that it is the primary obligation of the borrower to pay some or all of the property taxes, hazard insurance premiums, private or federal mortgage insurance premiums, and assessments, in a timely manner.

Failure of the borrower to make these payments and to provide evidence of payment to the lender may constitute grounds for default of the loan.

A reverse mortgage loan contract must state that if a borrower fails to pay property taxes, insurance premiums, or assessments, the lender may choose, at the lender's option, to pay the amounts due, charge them to the loan, and recalculate regularly scheduled payments under the loan to account for the increased outstanding loan balance.

**Fees - Calculation of Outstanding Loan Balance - Prepayment** (47-30-107)

If a reverse mortgage loan contract allows for a change in the payments or payment options, the lender may charge a reasonable fee when payments are recalculated.

The reverse mortgage loan contract may provide for:

- A monthly service fee;
- A fee for mortgage insurance premiums, which may be collected monthly or in advance. These fees must not exceed the monthly service fee or insurance premium permitted by HUD for participation in the Home Equity Conversion Mortgage Program or by Fannie Mae for a Fannie Mae Reverse Mortgage Loan;
- Repair administration fee, which complies with Fannie Mae guidelines or HUD regulations; and
- An equity share, including shared appreciation, if the transaction is a Fannie Mae Reverse Mortgage Loan.

The outstanding loan balance is calculated by subtracting the current totals of all reverse mortgage loan payments made by the borrower to the lender from:

- The sum of all disbursements made by the lender to the borrower, or to another party on the borrower's behalf;
- All taxes, assessments, hazard insurance premiums, mortgage insurance premiums, monthly service fees, and other similar charges paid to date by the lender and not reimbursed by the borrower within 60 days of the date payment was made by the lender;

- All actual closing costs the borrower has deferred, if a deferral provision is contained in the loan agreement; and
- The total accrued interest to date.

Prepayment of the reverse mortgage loan, in whole or part, is permitted without penalty at any time during the term of the loan.

### **Amount Owed by Borrower When Loan Is Due - Enforcement of Debt** (47-30-108)

When a reverse mortgage loan, other than a Fannie Mae Reverse Mortgage Loan, becomes due, if the borrower mortgaged 100% of the full value of the house, then the amount owed by the borrower must not be greater than:

- The fair market value of the house, minus sale costs; or
- The outstanding balance of the loan; *whichever amount is less.*

If the borrower mortgaged less than 100% of the full value of the house, the amount owed by the borrower must not be greater than:

- The outstanding balance of the loan; or
- The percentage of the fair market value, minus sale costs, as provided in the contract; *whichever amount is less.*

The lender will enforce the debt only through the sale of the property and will not obtain a deficiency judgment against the borrower.

### **Provision of Information to the Commissioner** (47-30-109)

All authorized lenders must provide all of the following information to the Commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers within 10 business days after application is made by a borrower, but not less than 20 business days before closing of the loan:

- The borrower's rights, obligations, and remedies with respect to the borrower's temporary absence from the home, late payments by the lender, and payment default by the lender;
- Conditions or events that require the borrower to repay the loan obligation;
- The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract;
- Either the projected total annual percentage rate, or a table of projected "Total Annual Loan Cost Rates" applicable under various loan terms and appreciation rates and interest rates applicable at sample ages of borrowers;
- Standard closing costs;
- All service fees to be charged during the term of the loan;
- Other information required by the Commissioner;

- Inform applicants that reverse mortgage counseling is required before the loan can be closed; and
- Shall provide the names and addresses of counselors listed with HUD or Fannie Mae.

**Lender to Provide Borrower with Name of Agent to Answer Inquiries - Annual Statement of Account** (47-30-110)

At the closing of the reverse mortgage loan, the lender must provide to the borrower the name of the lender's employee or agent who has been designated specifically to respond to inquiries concerning reverse mortgage loans. This information must be provided by the lender to the borrower annually, and whenever the information concerning the designated employee or agent changes.

On an annual basis and when the loan becomes due, the lender must issue to the borrower, without charge, a statement of account regarding the activity of the mortgage for the preceding calendar year, or for the period since the last statement of account was provided. The statement must include all of the following information for the preceding year:

- The outstanding balance of the loan at the beginning of the statement period;
- Disbursements to the borrower;
- The total amount of interest added to the outstanding balance of the loan;
- Any property taxes, hazard insurance premiums, mortgage insurance premiums, or assessments paid by the lender;
- Payments made to the lender;
- The total mortgage balance owed to date; and
- The remaining amount available to the borrower in reverse mortgage loans wherein proceeds have been reserved to be disbursed in one (1) or more lump sum amounts.

**Lender's Default – Applicability** (47-30-111)

A lender's failure to make loan advances to the borrower under the reverse mortgage loan contract will be deemed the lender's default of the contract.

- Upon the lender's default, the lender shall forfeit any right to collect interest or service charges under the contract.
- The lender's right to recovery at loan maturity will be limited to the outstanding balance as of the date of default, minus all interest.
- Lenders may also be subject to other default penalties established by the Commissioner.

Lender will not be considered to be in default:

- if the lender has previously declared the borrower in default, or if the lender makes the required loan advance within the time stated in the mortgage contract, or

- within 30 days of receipt of notice from the borrower that the loan advance was not received.

### **Borrower's Default - Terms and Conditions** (47-30-112)

A reverse mortgage loan contract may provide for a borrower's default, thereby triggering early repayment of the loan, based only upon one (1) or more of the following terms and conditions:

- The borrower fails to maintain the residence as required by the contract;
- The borrower sells or otherwise conveys title to the home to a third party;
- The borrower dies and the home is not the principal residence of the surviving borrower;
- The home is not the principal residence of at least one (1) of the borrowers for a period of 12 consecutive months for reasons of physical or mental illness;
- For reasons other than physical or mental illness, the home ceases, without prior written permission from the lender, to be the principal residence of the borrower for a period of 90 consecutive days and is not the principal residence during such period of another borrower under the loan;
- The borrower fails to pay property taxes, hazard insurance premiums, mortgage insurance premiums, service fees or assessments; or
- The mortgage or deed of trust ceases to constitute a first lien on the property securing the reverse mortgage loan.

### **Notice of Foreclosure - Continuation of Interest** (47-30-113)

When a borrower's obligation to repay the reverse mortgage loan is triggered, the lender must give the borrower not less than 60 days' notice of its intent to initiate foreclosure proceedings. If the contract so provides, interest will continue to accrue during the sixty-day period.

### **Future advances - Exemption from Other Law** (47-30-114)

A reverse mortgage may provide that it secures not only existing indebtedness or advances made contemporaneously with the execution thereof, but also future advances, whether obligatory or optional, or both, and whether made under open-end credit agreements or otherwise, to the same extent as if such future advances were made contemporaneously with the execution of the mortgage, even though no advance is made at the time of the execution of the mortgage and even though no indebtedness is outstanding at the time any advance is made.

All advances made under a reverse mortgage, whether obligatory or optional, relate back to the time of the recording of the mortgage, and are prior and superior to subsequent encumbrances and conveyances.

### **Prohibited Acts** (47-30-115)

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

- Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise;
- Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment;
- Improperly refusing to issue a release of a mortgage;
- Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person;
- Contracting for or receiving shared appreciation, except any Fannie Mae Reverse Mortgage Loan;
- Closing a reverse mortgage loan without receiving certification from a counselor that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower; or
- Failing to comply with this Act.

### **Rules - Notice of Violation - Penalties - Civil Actions** (47-30-116)

Upon finding probable cause to believe that an authorized lender or any other person, firm, or corporation is in violation of this Act, or of any law or any rule or regulation of this state, the United States, or an agency of the state or the United States, the Commissioner, after affording reasonable notice and opportunity to be heard to the lender, will order the lender to cease and desist from the violation.

If a lender fails to comply with or appeal the Commissioner's cease and desist order, the lender is subject to a civil penalty of \$1,000 for each violation that is the subject of the cease and desist order.

- The penalty imposed is in addition to, and not in lieu of, penalties available under any other law applicable to a reverse mortgage lender.

Upon a finding that a reverse mortgage lender has violated this Act, the Commissioner may revoke, temporarily or permanently, the authority of the lender to make reverse mortgage loans.

A person damaged by a lender's actions may file an action in civil court to recover actual and punitive damages. Attorneys' fees shall be awarded to a prevailing borrower. Nothing in this Act will limit any statutory or common law right of a person to bring an action in court for any act, nor will this Act limit the right of the state to punish a person for the violation of any law.

**Fannie Mae Reverse Mortgage Loans** (47-30-118)

When a Fannie Mae Reverse Mortgage Loan becomes due, the amount owed by the borrower may not be greater than:

- The fair market value of the house; or
- The outstanding balance of the loan, including any equity share, if applicable under the terms of the contract; *whichever is less*.

The lender may enforce the debt only through the sale of the property and may not obtain a deficiency judgment against the borrower.