

AN ACT relating to mortgages and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 198A IS CREATED TO READ AS FOLLOWS:

(1) There may be established, as part of the borrower education initiatives established by or through the Kentucky Housing Corporation, a Kentucky Homeownership Protection Center.

(2) The purpose of the Kentucky Homeownership Protection Center shall be to:

(a) Provide a centralized location for information on public services made available by federal, state, or local government or community entities, to assist a homeowner who is in default, or in danger of default, on his or her home loan; and

(b) Attempt to assist, any homeowner who contacts the center without cost to the homeowner, with the goal of:

1. Providing a homeowner with information, including toll-free telephone numbers for public services, made available by federal, state, or local government or community entities, including programs such as NeighborWorks and Don't Borrow Trouble, mortgage assistance programs, home repair assistance programs, and utility assistance programs;

2. Determining if the homeowner has contacted his or her lender regarding any default or danger of default; and

3. Providing a homeowner with counseling agencies approved by the United States Department of Housing and Urban Development that may be able to assist the homeowner.

(3) The Kentucky Homeownership Protection Center may enter into an agreement with any public or nonprofit entity to carry out any part of the mortgage

foreclosure counseling and education program.

(4) The Kentucky Homeownership Protection Center may solicit contributions and grants from the private sector, nonprofit entities, and the federal government to assist in carrying out the purposes of this chapter.

(5) The Kentucky Homeownership Protection Center shall not, directly or through an entity contracted with in accordance with subsection (3) of this section, make referrals or recommendations to or regarding specific for-profit lenders or mortgage brokers.

➔SECTION 2. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) "Kentucky Homeownership Protection Center" means the center established in Section 1 of this Act.

(2) At the time of closing and together with the final signed loan documents, if the Kentucky Homeownership Protection Center is operational as provided in Section 1 of this Act, a mortgagee shall provide to the homeowner any brochure, pamphlet, or other brief document prepared or approved by the Kentucky Housing Corporation that describes the services provided by the Kentucky Homeownership Protection Center.

➔SECTION 3. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) For the purpose of this section, "person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(2) It is unlawful for any person in the course of a mortgage transaction to improperly influence the development, report, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this section shall be construed to prohibit a person from requesting an appraiser to do one (1)

or more of the following:

(a) Consider additional appropriate property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's conclusion of value; or

(c) Correct errors in the appraisal report.

➔ Section 4. KRS 286.8-010 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "Office" means the Office of Financial Institutions;
- (3) "Executive director" means the executive director of the office~~[financial institutions]~~;
- (4) "Mortgage loan" means any loan secured by a mortgage or deed of trust on residential real property or any loan secured by collateral that~~[which]~~ has a mortgage lien interest in residential real property;
- (5) "Residential real property" means any single-family~~[single family]~~ residence or multiple dwelling structure containing four (4) or fewer~~[less]~~ single dwelling units for four (4) or fewer~~[less]~~ family units~~[,]~~ living independently of each other~~;~~~~[,]~~ or any single-family~~[single family]~~ condominium unit; or any single-family cooperative;
- (6) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries is evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other group however organized;
- (7) "Mortgage loan company" means any person who directly or indirectly:
  - (a) Holds himself out as being able to make or purchase loans secured by

- mortgages on residential real property;
- (b) Holds himself out as being able to service loans secured by mortgages on residential real property; or
  - (c) Holds himself out as being able to buy or sell notes secured by mortgages on residential real property;
- (8) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly {:
- (a)—}holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan that{which} will be secured by a mortgage on residential real property{; or
  - (b)—Holds himself out as being able to serve as an agent for any person who has money to loan, which loan is or will be secured by a mortgage on residential real property.
- ~~—"Mortgage loan broker" does not mean a person who performs functions of a loan processor, nor does it mean a person who performs only clerical functions such as delivering a loan application to a mortgage loan broker or mortgage loan company or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage loan broker, or mortgage loan company};~~
- (9) **"Mortgage loan originator" means an individual who:**
- (a) Provides services to one (1) and not more than one (1) mortgage loan company or mortgage loan broker;**
  - (b) Is subject to the supervision and control of that mortgage loan company or mortgage loan broker; and**
  - (c) In exchange for compensation by that mortgage loan company or mortgage loan broker, performs any one (1) or more of the following acts in the mortgage lending process:**
    - 1. Solicits, places, negotiates, originates, or offers to make a mortgage**

loan for a mortgage loan company or mortgage loan broker;

2. Obtains personal and financial information from a borrower or prospective borrower;

3. Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;

4. Explains, recommends, discusses, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower makes or completes an application; or

5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received~~["Loan officer" or~~

~~"originator" means an individual who discusses or negotiates the rates, terms, and conditions of a loan with a borrower or prospective borrower.~~

~~The term does not mean a person who performs functions of a loan processor, nor does it mean an individual who performs only clerical functions such as delivering a loan application to a mortgage loan broker or mortgage loan company or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage loan broker, or mortgage loan company];~~

(10) "Mortgage loan processor" means an individual who works under the instruction of a mortgage loan originator~~[loan officer or mortgage loan broker]~~ and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may or may not perform any of the duties or responsibilities of a mortgage loan originator in the mortgage loan lending process~~;~~ ~~and]~~

(11) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught

through~~[the]~~ Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;

(12) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:

(a) Uniform residential loan applications or other loan applications;

(b) Appraisal reports;

(c) Settlement statements;

(d) Supporting personal documentation for loan applications, including:

1. Form W-2 or other earnings or income statements;

2. Verifications of rent, income, and employment;

3. Bank statements;

4. Tax returns; and

5. Payroll stubs;

(e) Any required mortgage-related disclosures; and

(f) Any other document required as a part of, or necessary to, the mortgage lending process;

(13) "Pattern of residential mortgage fraud" means residential mortgage fraud that involves two (2) or more mortgage loans that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;

(14) "Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence

for the purpose of conducting business in the mortgage lending process in which the property subject to the mortgage loan process is residential real property located in Kentucky;

(15) "Registrant" means a person to whom a certificate of registration has been issued;

(16) "Licensee" means a person to whom a license has been issued;

(17) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;

(18) "Physical location" means any location where the mortgage lending process is conducted. The physical location where the mortgage lending process is conducted shall have a street address. A post office box or similar designation shall not meet the requirements of this subsection. The physical location shall be accessible to the general public as a place of business, unless the physical location is a residence and proof of residence has been submitted as required by subsection (8) of Section 7 of this Act; and

(19) "Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle.

➔ Section 5. KRS 286.8-020 is amended to read as follows:

(1) The following shall be exempt from this subtitle:

- (a) Any person duly licensed, chartered, or otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, service corporation subsidiary of a savings and loan association~~[associations]~~, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or

any wholly owned subsidiary of any such person. Any mortgage loan~~[wholly owned subsidiary or affiliate, or any mortgage loan broker, loan officer,]~~ originator~~[,]~~ or mortgage loan processor employed by any such person, or by a wholly owned subsidiary~~[or affiliate]~~ of any person listed in this paragraph, shall also be exempt;

- (b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney-at-law;
- (c) Any person doing any act under order of any court;
- (d) The United States of America;~~[,]~~ the Commonwealth of Kentucky;~~[, or]~~ any other state, district, territory, commonwealth, or possession of the United States of America;~~[, and]~~ any city, county, or other political subdivision;~~[,]~~ and any agency, division, or corporate instrumentality of any of the foregoing;
- (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
- (f) Any mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;
- (g) A consumer loan or finance company or an industrial loan company licensed under Subtitle 4 or 7 of this chapter whose primary business is originating consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter;~~[, or]~~ any wholly owned subsidiary~~[or affiliate]~~ of such a consumer loan or finance company or an industrial loan company;~~[, or]~~ any mortgage loan broker, loan officer, originator, or loan processor employed by any such person;~~[,]~~ or by a wholly owned subsidiary~~[or affiliate]~~ of any such consumer loan or finance company or an industrial loan company, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-

110(4); and

- (h) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations. *Any mortgage loan*~~[, except that any mortgage loan broker, loan officer, or]~~ originator *or mortgage loan processor* who is an employee of a mortgage loan company, mortgage loan broker, or~~[a]~~ nonprofit organization shall be subject to the provisions of KRS 286.8-255 and 286.8-260.
- (2) The following shall *comply with all provisions of this subtitle but shall* be exempt from~~[all]~~ the *licensing and examination* provisions of this subtitle. *The following*~~[except that they]~~ shall be subject to the examination~~[or investigation]~~ provisions of KRS 286.8-170(4) *and*~~[,] (5),] and[(6),] 286.8-180, [and 286.8-190]~~ if it appears on grounds satisfactory to the executive director that an examination~~[or investigation]~~ is necessary. *Any mortgage loan originator or mortgage loan processor who is an employee of the following shall be subject to Sections 17 and 18 of this Act.*~~[, and they shall be subject to the prohibited acts provisions of KRS 286.8-220; and any mortgage loan broker, loan officer, or originator who is an employee of a mortgage loan company or mortgage loan broker regulated by the Department of Housing and Urban Development shall be subject to KRS 286.8-255 and 286.8-260.];~~
  - (a) A mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth; *and*
  - (b) Any branch of a mortgage loan company or mortgage loan broker listed in paragraph (a) of this subsection, provided the branch is approved and regulated by the *United*~~[United]~~ States Department of Housing and Urban Development to perform business in this Commonwealth~~;~~

- (c) ~~Any natural person making a mortgage loan with his or her own funds for the person's own investment without intent to resell the mortgage loan;~~
- (d) ~~Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Office of Financial Institutions; and~~
- (e) ~~Any person making less than five (5) mortgage loans per year, who shall notify the Office of Financial Institutions of each loan made, in such written form and manner as required by the office].~~
- (3) Any **nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof**~~[person]~~ relying upon an exemption under subsection (1)(h) or (2)(a) ~~or~~<sup>[,]</sup> (b)~~[, or (d)]~~ of this section shall file with the executive director a **written application for a** claim of exemption. The executive director shall **approve an application for**~~[allow]~~ an exemption that is **timely filed and meets the requirements of this subtitle. The period of exemption shall be from January 1 through December 31, and the exemption shall expire on December 31 of the same calendar year. Every person granted an exemption under this section shall file a written application for a new exemption on an annual basis. The application shall be received by the executive director on or before December 31 of the same calendar year. A written application for a partial-year exemption shall also expire on December 31 of the same calendar year that the written application for an exemption is granted**~~[validly claimed]~~.
- (4) Any **mortgage loan company, mortgage loan broker, or branch thereof**~~[person]~~ relying upon an exemption under subsection (2)(a) or (b) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky **residential real** properties each year in order to maintain its exemption.
- (5) Any **mortgage loan company, mortgage loan broker, or branch thereof**~~[person]~~

relying upon an exemption under subsection (2)(a) or (b) of this section who ceases to be approved or regulated by the Department of Housing and Urban Development shall notify the executive director, in writing, within ten (10) days after it ceases to be regulated by the United States Department of Housing and Urban Development.

- (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), or (g) of this section shall not be required to file with the executive director a claim of exemption.
- (7) (a) Any natural person making a loan under subsection ~~(10)~~~~(2)(e)~~ of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:

#### DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky Office of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky Office of Financial Institutions.)

- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.

~~[(c) This subsection shall not apply to a natural person under subsection (2)(e) of this section making less than five (5) mortgage loans per year.]~~

- (8) Any **mortgage loan company, mortgage loan broker, or branch thereof**~~[person]~~ relying upon an exemption under subsection (2)(a) or (b) of this section shall provide a list of funded or brokered Federal Housing Administration-insured loans for the previous calendar year to the executive director by **December 31**~~[January 15]~~ of each year on a form prescribed by the executive director.

**(9) Any mortgage loan company, mortgage loan broker, or branch thereof applying**

for an exemption under subsection (2)(a) or (b) of this section shall not be approved for an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan company, mortgage loan broker, or branch thereof has:

(a) Held a mortgage loan company or mortgage loan broker license or registration for five (5) consecutive years prior to the filing of the application for an exemption under this section with the executive director;

or

(b) Been approved and regulated by the United States Housing and Urban Development to conduct business in the mortgage lending process for five (5) consecutive years prior to the filing of the application for an exemption under this section with the executive director.

(10) Any natural person making a mortgage loan with his or her own funds for the person's investment without the intent to resell the mortgage loan shall be exempt from the provisions of this subtitle except for the following:

(a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on grounds satisfactory to the executive director that an examination is necessary;

(b) Disclosure requirements of subsection (7) of this section;

(c) Any investigation and enforcement provisions of this subtitle including KRS 286.8-170(6), and Sections 9, 14, 20, and 25 of this Act;

(d) Prohibited acts under Sections 15 and 26 of this Act; and

(e) Any mortgage loan originator or mortgage loan processor who is an employee of a natural person exempted under this subsection shall be subject to Sections 17 and 18 of this Act.

(11) No person shall hold both a claim of exemption and a license granted under this subtitle.

➔ Section 6. KRS 286.8-030 is amended to read as follows:

- (1) (a) It is unlawful for any person to transact business in this state, either directly or indirectly, as a mortgage loan company or mortgage loan broker if he is not licensed under this subtitle ~~and registered in accordance with KRS 286.8-255~~, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a ~~to file a claim of exemption, has filed a claim of exemption and the filed~~ claim of exemption has been approved~~allowed~~ by the executive director.
- (b) It is unlawful for any natural person to make a loan under subsection (10) of Section 5 of this Act~~KRS 286.8-020(2)(e)~~ without making the disclosure required by KRS 286.8-020(7).
- (c) It is unlawful for any mortgage loan originator or mortgage loan processor~~loan officer~~, unless otherwise exempted, to originate mortgage loans or otherwise participate in the mortgage lending process in Kentucky if the mortgage loan originator or mortgage loan processor~~loan officer~~ is not registered in accordance with KRS 286.8-255.
- (d) It is unlawful for any mortgage loan company or mortgage loan broker to employ or use, with or without compensation, a mortgage loan originator or a mortgage loan processor if the mortgage loan originator or mortgage loan processor is not registered in accordance with Section 17 of this Act.
- (2) Neither the fact that a license or certificate of registration has been issued nor the fact that any person, business, or company is effectively registered or licensed, constitutes a finding by the executive director that any document filed under this subtitle is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant or licensee by the executive director or the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any prospective customer or client any representation inconsistent with this subsection.

- (3) Any person who willfully transacts business in this state in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.

➔Section 7. KRS 286.8-032 is amended to read as follows:

- (1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the executive director. *The executive director may require the electronic filing of the application and fees with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities, as part of the nationwide mortgage licensing system, and consistent with the intent found in KRS 286.8-285.*
- (2) The application shall:
- (a) Be sworn to;
  - (b) State the name of the applicant and each of the applicant's affiliates *and operating subsidiaries* engaged in business as a mortgage loan company or a mortgage loan broker;
  - (c) State the name under which the applicant will conduct business in Kentucky;
  - (d) State the *physical address*~~[location]~~ of the applicant's principal office and branch *or branches*~~[offices in Kentucky]~~;
  - (e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee, and director, specifying the capacity and title of each;
  - (f) Indicate the general plan and character of the business;
  - (g) Contain a corporate surety bond or other instrument as prescribed by KRS 286.8-060;
  - (h) If applying for a mortgage loan broker license, contain a compiled financial

statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant;

- (i) ~~Include~~~~[Require]~~ payment of the required~~[appropriate registration]~~ fees; and
  - (j) ~~Include~~~~[Require]~~ such other information as the executive director determines necessary.
- (3) No mortgage loan company license may be granted unless the applicant has and maintains, so long as the license is in effect, a minimum, documented funding source of one million dollars (\$1,000,000). If a mortgage loan company has a net worth in excess of one million dollars (\$1,000,000), an additional funding source is not required.
- (4) A license issued to a mortgage loan company or a mortgage loan broker shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, natural person, or trust, to engage in the mortgage loan business~~[licensed]~~ pursuant to this subtitle, subject to the applicable~~[registration]~~ requirements of this subtitle~~[KRS 286.8-255 and 286.8-260]~~.
- (5) If a licensee desires to establish a branch~~[office in Kentucky not already approved]~~, the licensee shall file an application~~[a registration statement]~~ with the executive director that includes the physical location~~[address]~~ and telephone number of the branch~~[office]~~, the name of the prospective manager, the anticipated opening date, and any other information requested~~[prescribed]~~ by the executive director.
- (6) Each applicant for a mortgage loan broker license shall have at least one (1) owner who owns at least twenty percent (20%) of the applicant and shall provide the executive director sufficient proof of a minimum of two (2) years' experience working in the mortgage industry. The executive director shall determine from the application whether an applicant has sufficient experience to meet this requirement.

- (7) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the office, of not less than thirty (30) classroom hours' duration. Mortgage loan brokers who have held a license for at least one (1) year shall be exempt from this requirement *if the applicant has held a mortgage broker license five (5) consecutive years prior to the filing of the application with the executive director.* ~~[This section shall not become effective until the office has approved at least one (1) educational training course.]~~ This section shall not apply to renewals of existing licenses. *Approval of an applicant for a mortgage loan broker license under this subsection shall be conditioned on the applicant establishing that the district, state, or territory from which the applicant applies, resides, or performs the primary portion of his or her mortgage business has rules, regulations, or other provisions which by reciprocity or comity are at least equivalent to this subsection.*
- (8) ~~[(a) On and after June 24, 2003,]~~ The application for a mortgage loan broker *and mortgage loan company* license shall state:
- (a)* The address of the physical location where the business is to be located in compliance with KRS 286.8-250 and whether such location is a residence. Photographs of the exterior, interior, and exterior sign of each location shall accompany the application. If the physical location is not a residence and is leased, the lease shall be for a *minimum* term of ~~[at least]~~ one (1) year. ~~[and]~~ A copy of the lease and the names of all employees conducting business under the lease shall accompany the application. If the physical location is a residence, proof that the location is a residence, in a form as required by the executive director, shall accompany the application. Proof of residence shall confirm that the mortgage loan broker owns or leases the residence and lives in the residence as the mortgage loan broker's main residence. Proof of

physical location shall include proof that local zoning requirements are satisfied.

- (b) *A mortgage loan company or mortgage loan broker shall notify the executive director of a change in the location or name of its business or the addition of any branch or branches in writing at least ten (10) days prior to the change.* ~~[The information required by paragraph (a) of this subsection shall be required for renewals of existing licenses which will expire on June 30, 2004.~~

- (c) ~~At least ten (10) days prior to the effective date of an address change of the mortgage loan broker's physical location, the mortgage loan broker shall notify the executive director in writing of the address change and shall include the information required by paragraph (a) of this subsection].~~

*(9) On or after January 1, 2009, every mortgage loan company and mortgage loan broker shall maintain an agent for service of process in the Commonwealth. The name, address, telephone number, and electronic mail address of the agent for service of process shall be filed with the application. The executive director shall be notified in writing at least five (5) days prior to any change in the status of an agent for service of process.*

*(10) The executive director may deem an application abandoned when an applicant fails to provide or respond to a request for additional information.*

➔ Section 8. KRS 286.8-034 is amended to read as follows:

- (1) An applicant for a license under this subtitle shall provide the executive director with separate checks payable to the Kentucky State Treasurer for:
- (a) An investigation fee of three hundred dollars (\$300) for the principal office and one hundred fifty dollars (\$150) for each branch office; and
  - (b) A license fee of four hundred fifty dollars (\$450) for the principal office and two hundred fifty dollars (\$250) for each branch *originating mortgages on residential*

- real properties located in Kentucky if the applicant applies for a license on or between November 1 and June 30 of the following calendar year~~[July 1 and December 31]~~ or of one hundred fifty dollars (\$150) for the principal office and one hundred dollars (\$100) for each branch if the applicant applies for a license on or between July 1 and October 31 of the same calendar year~~[January 1 and June 30]~~.
- (2) A license issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A license issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year~~[under this subtitle shall expire June 30 next after the date of issuance if it is not renewed]~~.
- (3) A license may be renewed by paying the annual renewal license fee~~[for renewing a license]~~ which is three hundred fifty dollars (\$350) for the principal~~[main]~~ office and two hundred fifty dollars (\$250) for each; and branch originating mortgages on residential real properties located~~[office]~~ in Kentucky, and submitting an annual report of activity as prescribed by the executive director~~[,]~~ and any other information required by the executive director. The executive director shall not approve the renewal of a mortgage loan broker's license if the executive director has not received the information on physical location as required in KRS 286.8-032(8).
- (4) The application, fees, and any required information~~[and payment]~~ shall be received by the executive director on or before November 30~~[June 20]~~ prior to the December 31~~[June 30]~~ expiration date. The executive director may reinstate the license within thirty-one (31) days of the expiration of the license if the licensee pays the filing fee and a reinstatement fee of two hundred fifty dollars (\$250). A license shall not be reinstated when the application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.

- (5) The executive director~~[office]~~ shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

➔Section 9. KRS 286.8-090 is amended to read as follows:

- (1) The executive director may suspend;~~;~~ revoke;~~;~~ place on probation;~~;~~ condition;~~;~~ refuse to issue or renew a license, registration, or exemption;~~;~~ or accept surrender of a license, registration, or exemption in lieu of revocation or suspension;~~;~~ or issue a cease and desist order if the executive director finds that the person, applicant, licensee, or registrant~~[mortgage loan company, mortgage loan broker, or loan officer]~~:
- (a) Does not meet, no longer meets, or has failed to comply with the requirements of this subtitle;
  - (b) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;
  - (c) Does not conduct his business in accordance with the law or the method of business includes or would include activities which are illegal where performed~~;~~ or has willfully violated any provision of this subtitle or any regulation hereunder~~;~~;
  - (d) Collects interest at a usurious rate;
  - (e) Is in such financial condition that he cannot continue in business with safety to his customers;
  - (f) Is~~Has been~~ guilty of fraud in connection with any transaction governed by this subtitle, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act~~applicable to the registrant; but the executive director may not institute a proceeding~~

~~under this subsection more than one (1) year from the date of the order or injunction relied on, and he may not enter an order under this subsection on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section];~~

- (g) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the mortgage lending process~~[course of acting as a mortgage loan company or mortgage loan broker]~~, or has engaged in a course of business that~~[which]~~ has worked or tended to work a fraud upon any person or would so operate;
- (h) Has made or caused to be made to the executive director any false representation of material fact or has suppressed or withheld from the executive director any information that~~[which]~~ the person~~[applicant or licensee or mortgage loan broker or loan officer]~~ possesses and which, if submitted to the executive director~~[by him]~~, would have rendered the person~~[applicant or licensee or mortgage loan broker or loan officer]~~ ineligible to be licensed,~~[or]~~ registered, or exempted from licensing or registration under this subtitle;
- (i) Has failed to account to persons interest for all funds received for the escrow account required under KRS 286.8-130;
- (j) Has refused to permit an examination or investigation by the executive director of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the executive director under the provisions of this subtitle;
- (k) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty, or any felony, or has pending against him any felony charge;

- (l) Has had any license,~~[-or]~~ registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state ~~of[-or]~~ the United States, or has surrendered or terminated any license,~~[-or]~~ registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action;
- (m) Has employed or contracted with a person who has failed to register or has had a license or registration denied, revoked, or suspended in this Commonwealth or another state;~~[-or]~~
- (n) Has demonstrated incompetence or untrustworthiness to act as a licensee or registrant or to continue a claim of exemption granted by application under this subtitle;
- (o) Has failed to pay any required fee under this subtitle;
- (p) Has abandoned an application by failing to provide the executive director any information required under this subtitle, or requested by the executive director, to complete an application;
- (q) Has influenced, or attempted to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan;
- (r) Has failed to comply with an administrative or court order imposing child support obligations;
- (s) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
- (t) Has improperly used notes or other resources to complete an examination for a license or registration;
- (u) Has violated any provision of Section 31 of this Act; or
- (v) Has violated any provision of this subtitle, administrative regulation promulgated hereunder, or order issued by the executive director.

- (2) Any person~~[Persons]~~ whose license, registration, or claim of exemption has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is~~[are]~~ prohibited from participating in any business activity of a registrant or licensee under this subtitle and from engaging in any business activity on the premises where a licensee or registrant under this subtitle is conducting its business.
- (3) The executive director shall execute a written order whenever a license, registration, or claim of exemption issued pursuant to this subtitle is suspended or revoked. The executive director shall serve the written order upon the licensee, registrant, or person claiming the exemption. The written order shall be sent by certified mail, return receipt requested, postage prepaid, to the last known principal business address of such licensee, registrant, or person claiming the exemption, as set forth in the records of the executive director. The written order shall be deemed to have been received by the licensee, registrant, or person claiming the exemption three (3) business days following the mailing thereof.
- (4) Any person who continues to participate in any business activity covered by this subtitle after such person's license, registration, or claim of exemption has been revoked, suspended, or denied shall be subject to the penalties in this section, Section 25 of this Act, and KRS 286.8-990 and shall be in violation of KRS 367.170.
- (5) Any person who has had a license, registration, or claim of exemption denied by the executive director shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of one (1) year from the date of denial.
- (6) Any person who has had a license, registration, or claim of exemption revoked by the executive director shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of three (3) years from

the date of revocation. A person whose license, registration, or claim of exemption has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license, registration, or claim of exemption under this subtitle.

- (7) The provisions of this section shall be in addition to any other penalties or remedies available, including the penalties of Section 25 of this Act ~~[KRS 286.8-990]~~.
- (8) The executive director may notify the Department of Revenue which may institute an action in the name of the Commonwealth of Kentucky~~[,]~~ in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
- (9) The executive director may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction, against any person, where the executive director has reason to believe from evidence satisfactory to the executive director that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief that is proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court.

**(10) The surrender or expiration of a license, registration, or exemption shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender or expiration. No revocation, suspension, refusal to renew, surrender, or expiration of any license, registration, or exemption shall impair or affect the obligation of any preexisting lawful contract between the licensee and the borrower. The surrender or expiration of a license, registration, or exemption shall not affect a proceeding to suspend or revoke a license or registration.**

➔Section 10. KRS 286.8-100 is amended to read as follows:

- (1) No licensee shall~~[mortgage loan company or mortgage loan broker may]~~ establish or maintain a branch~~[office]~~ in Kentucky without filing the application~~[registration statement]~~ as described in KRS 286.8-032(5) and receiving~~[the receipt of]~~ prior written approval of the executive director.
- (2) Each application~~[registration statement]~~ for approval of the establishment and maintenance of a branch~~[office]~~ shall state the physical address of the proposed location, the functions to be performed, and other information~~[which]~~ the executive director may require if different from that contained in the original application for a license or registration.
- (3) Each application~~[registration statement]~~ under this section shall be sworn to and accompanied by the appropriate fee as set out in KRS 286.8-034(1)(b).
- (4) Upon the receipt by the executive director of an application~~[a registration statement]~~ and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this subtitle, he shall approve the application~~[registration statement]~~.
- (5) The executive director may deem an application abandoned and subject to Section 9 of this Act when the application is received incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the executive director for further information.

➔Section 11. KRS 286.8-110 is amended to read as follows:

- (1) Mortgage loan companies are prohibited from making loans and mortgage loan brokers are prohibited from brokering loans in violation of KRS 360.100 and are prohibited from making or brokering such loans at a rate or rates in excess of those provided by KRS 360.010 and 360.025 or other applicable usury statutes.
- (2) Every real estate loan shall be secured by a mortgage or other instrument constituting a lien upon the real estate securing the loan, according to any lawful or

well-recognized practice ~~that~~<sup>[which]</sup> is best suited to the transaction. Any such instrument, constituting a lien, is herein termed a "mortgage." All such mortgages shall be recorded in accordance with the law of this Commonwealth.

- (3) Delinquency charges may be made for each installment more than ten (10) days in arrears, and only one (1) delinquency charge shall be made on any one (1) installment. No delinquency charge shall be made unless disclosed as required under subsection (2) of this section. In addition to such delinquency charges, attorneys' fees not exceeding fifteen percent (15%) of the unpaid balance shall be taxed as costs and court costs may be collected, provided that the note is referred to an attorney not a salaried employee of the holder for collection.
- (4) Any charges to be assessed against the borrower~~[,]~~ in the event a loan is paid prior to maturity shall be prominently displayed and made part of the note and the loan closing statement regarding the method of computation of any rebate. No prepayment penalty shall be assessed against the borrower following the ~~third~~<sup>[fifth]</sup> anniversary date of the mortgage **or sixty (60) days prior to the date of the first interest rate reset, whichever is less.** No prepayment penalty shall exceed ~~three~~<sup>[five]</sup> percent **(3%) for the first year, two percent (2%) for the second year, and one percent (1%) for the third year**~~[(5%)]~~ of the outstanding balance of the loan; **but in no event shall a prepayment penalty be assessed against a borrower refinancing with the mortgage loan company that funded the mortgage.**

➔Section 12. KRS 286.8-140 is amended to read as follows:

The executive director shall exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky. In addition to the other duties imposed upon him by law, the powers and duties of the executive director are:

- (1) To prescribe such rules, regulations, and forms and to promulgate such orders as are deemed to be necessary and appropriate to accomplish the basic purposes of and

the provisions contained within this subtitle. The executive director may from time to time make, amend, and rescind such rules, forms, and orders, including rules and forms governing applications, registration, reports, and loan disclosure statements, and defining any terms, whether or not used in this subtitle, insofar as the definitions are not inconsistent with the provisions of this subtitle. For the purpose of rules and forms, the executive director may classify loans, persons, and matters within his jurisdiction, and prescribe different requirements for different classes. No rule, form, or order may be made, amended, or rescinded unless the executive director finds that the action is necessary or appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of this subtitle. In prescribing rules and forms the executive director may cooperate with other state and federal agencies with a view to achieving maximum uniformity in the form and content of applications, reports and loan disclosure statements whenever practical;

- (2) To conduct such investigations as may be necessary to determine whether any person has engaged in or is about to engage in any act, practice, or course of conduct constituting a violation of any provision of this subtitle;
- (3) To conduct such examinations, investigations, and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of this subtitle; and

(4) At the executive director's discretion, to require filings and fees required under this subtitle to be electronically filed with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities that are part of the nationwide mortgage licensing system, or other agencies or authorities consistent with the intent of KRS 286.8-285. The executive director may accept uniform mortgage examinations or other procedures designed to implement a uniform national mortgage regulatory

system or facilitate common practices and procedures among the states.

➔ Section 13. KRS 286.8-160 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data, and other records **used in the mortgage lending process** as the executive director prescribes, or that are required by federal law.
- (2) The records governed in this subtitle shall be preserved for such time as the executive director may by rule or order require, not to exceed a period of five (5) years after a mortgage loan application is completed, whether approved or rejected, or on mortgage loans paid in full, whichever is longer. Records shall be held for longer than five (5) years where federal law prescribes or supersedes this section.
- (3) Records required to be preserved under this subtitle may be kept in an electronic retrievable format, or other similar form of medium, that is readily accessible to examination, investigation, and inspection by the executive director.
- (4) Every mortgage loan company and mortgage loan broker shall file ~~such~~ financial reports as the executive director ~~by regulation~~ prescribes.
- (5) If the information contained in any document filed with the executive director is or becomes inaccurate or incomplete in any material respect, the **person who filed the document** ~~licensee~~ shall promptly file a correcting amendment.
- (6) Any person who ceases operating as a mortgage loan company or mortgage loan broker under the provisions of this subtitle shall, prior to the discontinuance of business in the residential mortgage lending process, notify the executive director of the physical location where the records required to be kept under this subtitle will be preserved. The records shall be made accessible to the executive director upon five (5) business days' written notice.
- (7) Any person who ceases operating as a mortgage loan company or mortgage loan

broker under the provisions of this subtitle shall designate a custodian of records and notify the executive director of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the executive director access to the records for examination and investigation upon demand.

(8) Records may be maintained by a mortgage loan company or mortgage loan broker at a location other than within this Commonwealth, so long as they are made accessible to the executive director upon five (5) business days' written notice.

(9) The executive director may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (2) of this section.

➔ Section 14. KRS 286.8-190 is amended to read as follows:

- (1) The executive director may investigate either upon complaint or otherwise when it appears that any person~~[a mortgage loan company or mortgage loan broker]~~ is conducting~~[its]~~ business in an unsafe and injurious manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.
- (2) If it appears to the executive director upon sufficient grounds or evidence satisfactory to the executive director that any mortgage loan company or mortgage loan broker has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that the mortgage loan company's or mortgage loan broker's affairs are in an unsafe condition, the executive director may:

- (a) Order the person~~[mortgage loan company or mortgage loan broker]~~ to cease and desist from the acts or practices by a formal written order delivered to the person~~[company or broker]~~ stating any alleged violation~~[together with a statement of the facts alleged to be the violation]~~. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person~~[or telegraph to the company or broker]~~ affected. The person~~[company or broker]~~, upon written application, shall be entitled to a hearing; but if a written~~[no]~~ application for a hearing is not timely received by the executive director~~[made]~~ within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the executive director or terminated by a court order; and
- (b) Apply directly to Franklin Circuit Court, or any court of competent jurisdiction, to enjoin any acts or practices in violation of this subtitle and to enforce compliance with this subtitle or any rule or order hereunder. Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The executive director shall~~[may]~~ not be required to post a bond.

➔ Section 15. KRS 286.8-220 is amended to read as follows:

- (1) It shall be unlawful for any person to make or cause to be made, in any document filed with the executive director or in any proceeding under this subtitle, any statement that~~[which]~~ is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect, including an omission of a material fact.
- (2) It shall be unlawful for any person~~[mortgage loan company or mortgage loan broker]~~, in connection with a transaction involving the mortgage lending process,

or in connection with the operation of a mortgage loan business or the management or servicing of mortgage contracts, directly or indirectly:

- (a) To employ a device, scheme, or artifice to defraud;
- (b) To engage in any act, practice, or course of business ~~that~~<sup>[which]</sup> operates or would operate as a fraud or deceit upon any person;
- (c) To fail to disburse funds in accordance with a loan commitment;
- (d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (e) Upon receipt of a customer's written request, to delay beyond five (5) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history; or
- (f) To charge a fee for the issuance of an initial written loan payoff amount or payment history for each calendar quarter as set out in paragraph (e) of this subsection.

- (3) Unless exempted by subsection (1) of Section 5 of this Act~~[KRS 286.8-020]~~, and, if required by ~~KRS 286.8-020(3)~~ to file a claim of exemption, has filed a claim of exemption and the filed claim of exemption has been allowed by the executive director~~],~~ it shall be unlawful for any person to transact any business in the mortgage lending process on residential real property~~[loan business]~~ in Kentucky~~[this state]~~ unless it:

- (a) Qualifies to do business in Kentucky as required by KRS Chapter 271B; and
- (b) Complies with the provisions of this subtitle.

- (4) It shall be unlawful for any person to use prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a mortgage loan with another mortgage loan company or mortgage loan broker, when the person:**

- (a) Fails to state in the initial solicitation that the person is not affiliated with**

- the mortgage loan company or mortgage loan broker with which the consumer initially applied;
- (b) Fails in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;
- (c) Uses information regarding consumers who have opted out of the prescreened offers of credit or who have placed their contact information on the state or federal do-not-call registry; or
- (d) Solicits a consumer with an offer of certain rates, terms, and costs with the knowledge that the rates, terms, or costs will be subsequently changed to the detriment of the consumer.

➔ Section 16. KRS 286.8-250 is amended to read as follows:

- (1) ~~{For purposes of this section, “physical location” means an actual office where the business of mortgage lending or the business of taking or soliciting mortgage loan applications is conducted. The office shall have a street address. A post office box or similar designation shall not meet the requirements of this section. The office shall be accessible to the general public as a place of business and shall hold itself open on a regular basis during posted hours, unless the office is in the residence of the mortgage loan broker and proof of residence has been submitted as required by KRS 286.8-032(8).}~~
- (2) ~~(a)}~~ Each mortgage loan broker licensed under this subtitle shall maintain a physical location ~~[in this state.~~
- ~~(b) Any mortgage loan broker licensed under this subtitle who, on June 24, 2003, does not maintain a physical location in this state shall have ninety (90) days after June 24, 2003, in which to establish one. After the ninety (90) day period, a mortgage loan broker licensed under this subtitle on June 24, 2003, shall not transact business in Kentucky if the licensed mortgage loan broker~~

does not maintain a physical location in this state].

~~(2)~~~~(3)~~ The license certificate of a mortgage loan broker shall be at all times prominently displayed at the mortgage loan broker's physical location.

➔ Section 17. KRS 286.8-255 is amended to read as follows:

(1) ~~[Beginning July 1, 2004, and annually thereafter,]~~ No mortgage loan originator or mortgage loan processor~~[broker and no loan officer]~~ shall originate or process mortgage loans on residential real property in Kentucky unless such mortgage loan originator or mortgage loan processor~~[broker or loan officer]~~ is registered with the office and has been issued a certificate of registration by the office. The office shall maintain a database~~[registry]~~ of all mortgage loan originators and mortgage loan processors~~[brokers and loan officers]~~ originating or processing mortgage loans on residential real property in Kentucky. The office shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors~~[brokers and loan officers]~~.

(2) The registration shall:

- (a) Be on a form prescribed by the executive director;
- (b) Be accompanied by a registration fee in the amount of fifty dollars (\$50) which shall be used solely by the office to establish and maintain a database of all mortgage loan originators and mortgage loan processors~~[the registry system required by this section]~~ and any excess funds shall be retained by the office and shall not lapse to the general fund.~~[;]~~

~~(3)~~~~(e)~~ Applications for~~[In the case of]~~ initial registrations of mortgage loan originators and~~[loan officers or]~~ mortgage loan processors shall~~[brokers]~~, be accompanied by satisfactory evidence that the applicant has successfully completed twelve (12) classroom hours of education courses related directly to the mortgage lending~~[loan]~~ process~~[or brokerage business]~~, as approved by the executive director. This subsection~~[paragraph]~~ shall not apply to renewals of existing

certificates of registration, ~~and~~

~~(4)~~~~(d)~~ Applications for ~~Beginning July 1, 2005, in the case of~~ renewals of certificates~~certificate~~ of registration~~registrations~~ by registered mortgage loan originators and mortgage loan processors shall~~brokers and registered loan officers,~~ be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of KRS 286.8-260 and by payment of a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the office to establish and maintain a database of all mortgage loan originators and mortgage loan processors~~the registry system required by this section~~ and any excess funds shall be retained by the office and shall not lapse to the general fund.

~~(5)~~~~(3)~~ The executive director may issue for good cause a temporary certificate of registration for a period not to exceed one hundred eighty (180) days to a mortgage loan originator or mortgage loan processor~~officer or mortgage loan broker~~ who is awaiting the completion of a criminal records background check~~or is in the process of fulfilling the initial education requirements~~ pursuant to this subtitle~~section~~. The temporary certificate of registration shall expire automatically by operation of law in one hundred eighty (180) days from the date of issuance if the application is not completed~~complete~~. No more than one (1) temporary certificate of registration shall~~will~~ be issued within an eighteen (18) month period.

~~(6)~~~~(4)~~ A certificate of registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A certificate of registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year~~shall be renewed by June 20 of each year. Any certificate of registration shall automatically expire by operation of law by midnight on June 30 of the same year if~~

~~a properly completed renewal application is not submitted with a renewal fee as required in this section].~~ Any certificate of registration that has expired may be reinstated by the executive director upon payment of the annual registration fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the certificate of registration.

~~(7)(5)~~ The office shall provide a registrant with a duplicate copy of any certificate of registration upon satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

~~(8)(6)~~ All mortgage loan originators and mortgage loan processors~~[brokers and loan officers]~~ subject to the registration requirements of this section shall also be subject to all applicable provisions of this subtitle~~[KRS 286.8-090(1)(a), (e), (f), (g), (h), (j), (k), (l), (m), and (n), 286.8-220(1) and (2), and 286.8-990].~~

**(9) The executive director may require the submission of a federal and state criminal background records check as part of an application filed under this subtitle. The cost of the background check shall be borne by the applicant.**

➔ Section 18. KRS 286.8-260 is amended to read as follows:

- (1) Beginning July 1, 2004, any person required to be~~[all]~~ registered under this subtitle~~[mortgage loan brokers and registered loan officers]~~ shall complete at least twelve (12) hours of continuing professional education, a minimum of six (6) of which must be classroom hours, by June 30, 2005, and annually thereafter.
- (2) Up to twelve (12) hours of continuing professional education may be carried forward from one (1) continuing education year to the next continuing education year. The continuing education year shall begin on November~~[July]~~ 1 and end on October~~[June 30]~~ of the following year.
- (3) The completion of the educational requirement in the case of initial registrations under KRS 286.8-255(2)(c) shall satisfy the continuing education requirement of this section for the first renewal registration.

- (4) Fifty (50) minutes of classroom contact shall equal one (1) hour of continuing professional education. Each continuing professional education course, other than classroom hours, shall equal the number of hours approved and designated by the Office of Financial Institutions for that course. Course sponsors shall maintain records of attendees for two (2) years after completion of the course.
- (5) Every person required to be registered under this subtitle~~[mortgage loan broker and every registered loan officer subject to this section]~~ shall furnish to the executive director written certification as to each continuing professional education course satisfactorily completed. The certification shall be signed by the teacher or sponsoring organization of the course showing the date the course was completed, the number of hours of the course, and the number of hours attended. The certification shall be on a form prescribed by the executive director.
- (6) Beginning July 1, 2009, the executive director shall approve professional education courses to meet the continuing professional education requirement of this subtitle. The executive director may assess a fee of fifty dollars (\$50) for each professional education course that is reviewed for approval. Only courses approved by the executive director~~[office]~~ shall qualify to satisfy the continuing professional education requirement of this section. Professional education courses shall be reviewed by the executive director on a biennial basis from the date of the approval to determine whether the course continues to satisfy the professional education requirements of this section. The executive director may withdraw approval of any education course at any time where it is shown to the satisfaction of the executive director that the education course no longer meets the requirements of this section.
- (7) (a) Beginning July 1, 2009, the executive director shall approve education providers who are qualified to teach professional education necessary to meet the continuing professional education requirement of this subtitle. Any

education provider approved by the executive director shall not be required to register or seek approval of his or her qualifications with any other state agency. Approved education providers shall meet the standards established in administrative regulation and may include without limitation:

1. Trade associations;
2. For-profit education providers;
3. Not-for-profit education providers;
4. Employers conducting in-house training programs; and
5. Government agencies and government associations.

(b) An individual teaching any approved continuing professional education course shall qualify for the same number of hours of continuing professional education as would be granted to a mortgage loan broker or mortgage loan originator~~[loan officer]~~ taking and satisfactorily completing the course.

(c) The executive director may withdraw approval of any education provider at any time where it is shown to the satisfaction of the executive director that the education provider no longer qualifies to teach or provide continuing professional education required under this section.

(8) For good cause shown, the executive director may grant an extension during which the continuing education requirement of this section may be completed, but the extension may not exceed thirty (30) days. What constitutes good cause for the extension of time rests within the discretion of the executive director.

(9) The certificate of registration of any mortgage loan originator or mortgage loan processor that fails~~[broker and any loan officer failing]~~ to comply with the continuing professional education requirements of this section and who has not been granted an extension of time to comply in accordance with subsection (8) of this section shall expire and shall be promptly surrendered to the executive director without demand.~~[The mortgage loan broker or loan officer shall not originate any~~

~~mortgage loans while not registered.]~~

➔ Section 19. KRS 286.8-270 is amended to read as follows:

**(1) A mortgage loan broker shall comply with the following duties:**

**(a) A mortgage loan broker shall exercise good faith and fair dealing, shall act in the best interest of the borrower, and shall not compromise a borrower's right or interest in favor of another's right or interest;**

**(b) A mortgage loan broker shall disclose to borrowers all material facts of which the mortgage loan broker has knowledge that might reasonably affect the borrower's rights, interests, or ability to receive the borrower's intended benefit from the residential mortgage loan; and**

**(c) A mortgage loan broker shall provide a written accounting to a borrower for all the borrower's money and property received by the broker.**

**(2) Nothing in this section shall prohibit a mortgage loan broker from contracting for or collecting a fee for services rendered from the borrower or lender if the fee has been properly disclosed to the borrower in advance of providing of such**

~~services[may act as agent for the person or persons, if an individual or individuals, attempting to obtain a mortgage loan. The mortgage loan broker shall clearly and conspicuously disclose to the person or persons attempting to obtain a mortgage loan whether the mortgage loan broker is acting as an agent for that person or persons, in a separate writing, and provide such disclosure to the person or persons attempting to obtain the mortgage loan before any personal financial information may be obtained by the mortgage loan broker. If a mortgage loan broker is obtaining personal information from the person or persons obtaining the mortgage loan over the telephone, the mortgage loan broker shall give the disclosure verbally at that time and mail the written disclosure within two (2) business days].~~

➔ Section 20. KRS 286.8-990 is amended to read as follows:

**(1) This section shall be known and cited as the "Kentucky Residential Mortgage**

Fraud Act."

(2) A person is guilty of residential mortgage fraud when, with the intent to defraud, that person does any of the following in connection with the mortgage lending process:

(a) Employs a device, scheme, or artifice to defraud;

(b) Engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(c) Fails to disburse funds in accordance with a loan commitment;

(d) Knowingly makes or attempts to make any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity involved in the mortgage lending process relies on it;

(e) Knowingly uses or facilitates or attempts to use any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process relies on it;

(f) Receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew, or should have known, resulted from a violation of paragraph (a), (b), (c), (d), or (e) of this subsection;

(g) Knowingly causes to be filed with the executive director or in any proceeding under this subtitle any document that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect; or

(h) Conspires or solicits another to violate any of the provisions of this subsection.

(3) It shall be sufficient in any prosecution under this section for residential

mortgage fraud to show that the party accused acted with the intent to deceive or defraud. It shall be unnecessary to show that any particular person or entity was harmed financially in the transaction or that the person or entity to whom the deliberate misstatement, misrepresentation, or omission was made relied upon the misstatement, misrepresentation, or omission.

(4) In any criminal proceeding brought under this section, the crime shall be construed to have been committed:

(a) In the county in which the residential real property for which a mortgage loan is being sought is located;

(b) In any county in which any act was performed in furtherance of the violation;

(c) In any county in which any person alleged to have violated this section had control or possession of any proceeds of the violation;

(d) If a closing occurred, in any county in which the closing occurred; or

(e) In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds or with the Division of Motor Vehicles.

(5) Upon referral by the executive director, the Kentucky Real Estate Commission, the Attorney General, the Kentucky Board of Appraisers, or other parties; or upon its own investigation of available evidence concerning any violation of this subtitle; the proper Commonwealth's attorney or district attorney may institute the appropriate criminal proceedings under this section.

(6) Unless the conduct is prohibited by some other provision of law providing for greater punishment, a violation of this section involving a mortgage loan is a Class D felony for the first or second offense and a Class C felony for each subsequent offense.

(7) (a) All real and personal property of every kind used or intended for use in the

course of, derived from, or realized through a violation of this section shall be subject to forfeiture to the Commonwealth. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this section.

(b) In addition to the provisions of paragraph (a) of this subsection, courts may order restitution to any person who has suffered a financial loss due to violation of this section.

(8) In the absence of fraud, bad faith, or malice, a person shall not be subject to an action for civil liability for filing reports or furnishing other information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency.

~~(9) Any person who willfully violates any provision of this subtitle, except KRS 286.8-220(1), or who willfully violates KRS 286.8-220(1) knowing the statement to be false or misleading in any material respect, shall be guilty of a Class D felony.~~

~~(2) Any person who willfully violates any rule or order of the executive director, authorized under this subtitle, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.~~

~~(3) The executive director may refer the evidence available concerning violations of this subtitle or any rule or order hereunder to the appropriate prosecuting attorney, who may, with or without reference, institute the appropriate criminal proceeding under this subtitle.~~

~~(4)~~ Nothing in this subtitle shall limit the powers of the state to punish any person for any conduct that~~[which]~~ constitutes a crime.

~~(10)~~~~(5)~~ The ~~court~~~~executive director~~ may assess a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000,) against any person who is convicted of violating~~mortgage loan company or mortgage loan broker that violates~~ any provision of this section~~subtitle. The Attorney General shall institute an action, in the name of the Commonwealth, in the Franklin Circuit Court or the Circuit Court of the county in which the violation occurred, for the recovery of the fine~~.

~~(11)~~~~(6)~~ Any person who knowingly engages~~shall engage~~ in the business of residential mortgage lending~~businesses~~ regulated by this subtitle without first securing a license or registration therefore~~therefor~~ shall be guilty of a Class A misdemeanor~~and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000)~~.

➔ Section 21. KRS 286.8-060 is amended to read as follows:

- (1) Except as otherwise provided in this section, at the time of filing an application or renewal for registration as a mortgage loan company or mortgage loan broker, the applicant shall post corporate surety bonds in an amount not less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies and not less than fifty thousand dollars (\$50,000) for mortgage loan brokers.
- (2) Every bond shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.
- (3) The bond shall be made payable to the executive director of the Office of Financial Institutions.
- (4) Every bond shall be available for the recovery of expenses, fines, and fees levied by the executive director under this subtitle, and for losses or damages that are determined by the executive director to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the

requirements of this subtitle.

(5) Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.

(6)~~[(2)]~~ In lieu of posting corporate surety bonds, the applicant may:

- (a) Deposit with the executive director an irrevocable letter of credit for an amount equal to the required bond upon which the applicant is the obligor, issued by a bank approved by the executive director, whose deposits are insured by the Federal Deposit Insurance Corporation;
- (b) Establish an account payable to the executive director in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required bond; or
- (c) Deposit with the executive director an escrow agreement for a savings certificate of a federally insured financial institution in this state for an amount payable which is equal to the amount of the required bond and which is not available for withdrawal except by direct order of the executive director. Interest earned on the certificate accrues to the applicant.

(7)~~[(3)]~~ If the executive director or the executive director's representative shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this subtitle, the order to be complied with within thirty (30) days following service thereof upon the registrant.

➔SECTION 22. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

**The mortgage lending fraud prosecution account is created in the custody of the State Treasurer. All civil penalties directed by the executive director to be transmitted to the mortgage lending fraud prosecution account shall be deposited into the account.**

Expenditures from the account may be used only for criminal prosecution of fraudulent activities within the residential mortgage lending process. Only the executive director of the Office of Financial Institutions or the executive director's designee may authorize expenditures from the account.

➔SECTION 23. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The executive director is authorized through the collection of civil penalties from any violation of this subtitle to retain the funds collected for the purpose of depositing the funds into the mortgage lending prosecution account created in Section 22 of this Act. The funds shall be transmitted monthly to the State Treasurer, who shall deposit the funds into the mortgage lending fraud prosecution account created in Section 22 of this Act. The executive director of the Office of Financial Institutions is responsible for the distribution of the funds in the account and shall, in consultation with the Attorney General and local prosecutors, develop administrative regulations for the use of these funds to pursue criminal prosecution of fraudulent activities within the residential mortgage lending process.

➔SECTION 24. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The executive director may file an administrative complaint against any person if it appears on grounds satisfactory to the executive director that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of Sections 9, 20, and 25 of this Act. The executive director shall serve the administrative complaint by certified mail or personal delivery to the last known address of the person named in the complaint. The person named in the administrative complaint shall be entitled to a hearing, but only upon timely receipt of a written answer and request for a hearing within twenty (20) days of the mailing or hand delivery of the administrative complaint. If timely requested, an administrative hearing

shall be held in accordance with the provisions of KRS Chapter 13B and 808 KAR 12:030.

➔SECTION 25. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The executive director may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the executive director under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

➔SECTION 26. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any licensee or person holding a claim of exemption to originate a loan secured by a mortgage on residential real property in Kentucky if the total net income generated by the licensee or person exceeds two thousand dollars (\$2,000) or four percent (4%) of the total loan amount, whichever is greater.

(2) As used in this section, unless the context requires otherwise:

(a) "Total net income" means any and all fees, income, or compensation of any kind collected, received, or charged by the licensee or person holding a claim of exemption, or by an affiliate of the licensee or person holding a claim of exemption. "Total net income" includes but is not limited to origination fees, broker fees, lender fees and discount points if retained by the originating licensee or person as income, processing fees, administrative fees, document preparation fees, yield spread premiums, servicing release premiums, and financial counseling fees. "Total net income" does not

include interest on the mortgage loan itself, or fees paid to compensate unaffiliated third parties; and

(b) "Total loan amount" means the amount financed in the mortgage loan less the total net income generated by the originating licensee or person, or the affiliate of the originating licensee or person.

➔SECTION 27. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of improving the skills and knowledge of mortgage professionals and creating a more uniform, consistent, and efficient system of license testing and education, the executive director may establish standards and requirements by administrative regulation for license testing, prelicensure education, and continuing education requirements for mortgage professionals subject to the testing and education requirements of this subtitle. For these purposes, the executive director may enter into such cooperative, coordinating, and information-sharing agreements with any other federal and state regulatory agencies or do so by, with, and through any trade association of such agencies, or contracting with a third-party testing service, with respect to any testing and education of mortgage professionals, as may be reasonably necessary or appropriate, as determined in the discretion of the executive director.

(2) The standards established by administrative regulation shall be developed to enhance and improve the efficiency of licensing of mortgage professionals; however, nothing in this section shall be deemed to expand who shall be subject to testing or education standards in this state. The standards and requirements established by administrative regulation shall include at least the following:

- (a) Testing standards, requirements, methods, and coverage;
- (b) Education standards, requirements, methods, and coverage;
- (c) A system for approving tests and courses of education;

- (d) A system for approving test providers and education providers;
  - (e) A system for certifying satisfactory completion of testing and education requirements;
  - (f) Standards for reciprocity of testing and education;
  - (g) A system for facilitating the exchange and reciprocity of information between states; and
  - (h) A system for maintaining and reporting testing and education information.
- (3) Effective January 1, 2010, any person applying for a license, registration, or claim of exemption under subsection (3) of Section 5 of this Act, shall pass a written examination prior to being issued a license, registration, or claim of exemption. Examinations required by this section shall be developed and conducted in accordance with an administrative regulation promulgated by the executive director.
- (4) The executive director may assess by order a nonrefundable testing fee of no more than one hundred dollars (\$100) for each examination.
- (5) The executive director may make arrangements for administering examinations and collecting the nonrefundable testing fee as set forth in subsections (1) and (2) of this section.
- (6) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

➔SECTION 28. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) Any examinations required under this subtitle shall test the knowledge or relevant skills and abilities of the individual concerning the area of mortgage lending, the duties and responsibilities to the consumer during the mortgage lending process, and the pertinent federal and state mortgage laws and

administrative regulations of this state.

- (2) The executive director shall make available to applicants printed information as to the general scope of, and principal subjects to be covered by, the examination, together with information as to published books and other reference sources which may be studied by the applicant to prepare for the examination. The executive director shall not furnish lists of examination questions, and examination questions shall not be selected from lists known to the executive director to have been furnished applicants.

➔SECTION 29. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) The executive director shall provide a reasonable opportunity to all applicants to take any examination required by this subtitle. An examination shall be held at least monthly in Frankfort, Kentucky. An examination may be held on a monthly basis at a place in this state designated by the executive director which is reasonably accessible to applicants.
- (2) The executive director shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between applicants examined.
- (3) The executive director shall bar any applicant for two (2) years from taking the examination if the applicant has failed to pass the examination three (3) consecutive times.

➔SECTION 30. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) The executive director may enter an emergency order suspending, limiting, or restricting the license, claim of exemption, or registration of any mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor without notice or hearing if it appears upon grounds satisfactory to the

executive director that the mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has engaged or is engaging in unsafe, unsound, and illegal practices that pose an imminent threat to the public interest.

(2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the executive director that:

(a) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;

(b) The mortgage loan broker or mortgage loan company is in such financial condition that it cannot continue in business with safety to its customers;

(c) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;

(d) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business in the mortgage lending process, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;

(e) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has made or caused to be made to

the executive director any false representation of material fact, has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the executive director;

(f) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action; or

(g) The surety bond required under KRS 286.8-060 has terminated, expired, or no longer remains in effect.

(3) An emergency order issued under this section becomes effective when signed by the executive director. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the party or parties. The order shall be deemed served upon delivery or upon return of the order.

(4) A party aggrieved by an emergency order issued by the executive director under this section may request an emergency hearing. The request for hearing shall be filed with the executive director within twenty (20) days of service of the emergency order.

(5) Upon receipt of a written request for emergency hearing, the executive director shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.

(6) An emergency order issued under this section shall remain in effect until it is withdrawn or superseded by an order of the executive director or until it is

**terminated by a court order.**

➔Section 31. KRS 360.100 is amended to read as follows:

(1) The following definitions apply for the purposes of this section:

(a) "High-cost home loan" means a loan other than an open-end credit plan or a reverse mortgage transaction in which:

1. The principal amount of the loan is greater than fifteen thousand dollars (\$15,000) and does not exceed two hundred thousand dollars (\$200,000);
2. The borrower is a natural person;
3. The debt is incurred by the borrower primarily for personal, family, or household purposes;
4. The loan is secured by a mortgage on residential real property or secured by collateral which has a mortgage lien interest in residential real property, which is or will be occupied by the borrower as the borrower's principal dwelling; and

5. **The terms of the loan exceed either or both of the following thresholds:**

**a.** Without regard to whether the loan transaction is or may be a "residential mortgage transaction" as defined in 12 C.F.R. 226.2(a)(24), as amended from time to time, the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. sec. 1602(aa), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. 226.32, as the same may be amended from time to time; **or**

b. The total points and fees payable by the borrower at or before the loan closing exceed the greater of three thousand dollars (\$3,000) or six percent (6%) of the total loan amount as shown as the amount financed on the final Truth-in-Lending Statement.

- (b) "Lender" means any person who funds or negotiates the terms of a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan.

However, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to an action for violation of this section only if the violation for which the action or proceeding is brought is apparent on the face of the disclosure or the underlying promissory note.

(c) "Material change" means any of the following:

1. A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment;
2. A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made;
3. An increase in the interest rate of more than one quarter of one percent (0.25%), or an equivalent increase in the amount of discount points charged;
4. A change regarding the requirement of escrow for taxes and insurance; and
5. A change regarding the requirement or payment, or both, of private mortgage insurance.

(d) 1. "Total points and fees payable by the consumer at or before the loan closing" means all amounts payable by a borrower at or before the

closing of a home loan, excluding any interest or time-price differential due at closing on the loan proceeds and includes:

- a. All mortgage broker fees, including fees paid by the consumer directly to the broker, fees paid by the consumer to the creditor for delivery to the broker, and yield spread premiums paid by the creditor to the broker;
- b. Any amount payable under an add-on or discount system of additional charges;
- c. Service, transaction, activity, and carrying charges that exceed similar charges on a noncredit account;
- d. Points, loan fees, assumption fees, finder's fees, and similar charges;
- e. Appraisal, investigation, and credit report fees when service is provided by the lender or an affiliate and not by a third party;
- f. Charges imposed on a creditor by another person for purchasing or accepting the borrower's obligation, if the borrower is required to pay the charges in cash, as an addition to the loan obligation, or as a deduction from loan proceeds;
- g. Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage, whether or not the debt-cancellation coverage is insurance under applicable law; or
- h. Closing agent fees charged by a third party, but only if the lender requires the particular services for which the borrower is charged and the lender requires the imposition of the charge or the lender retains a portion of the charge.

2. "Total points and fees payable by the consumer at or before the loan

closing" does not include real estate related fees paid to third parties if the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor. Real estate related fees include:

- a. Fees for title examination, abstract of title, title insurance, property survey, and similar purposes;
- b. Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
- c. Notary and credit report fees;
- d. Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation and flood hazard determinations; and
- e. Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(2) A high-cost home loan shall be subject to the following limitations:

- (a) 1. No lender may make, provide, or arrange a high-cost home loan with a prepayment penalty unless the lender offers the borrower a loan without a prepayment penalty, the offer is in writing, and the borrower initials the offer to indicate that the borrower has declined the offer. The lender shall disclose the discount in rate received in consideration for a high-cost home loan with the prepayment penalty; and
2. If a borrower declines an offer required in subsection (2)(a)1. of this subsection, the lender may include a prepayment penalty schedule. No prepayment penalty shall be assessed against the borrower following the third anniversary date of the mortgage or sixty (60) days prior to

the date of the first interest rate reset, whichever is less. No prepayment penalty shall exceed three percent (3%) for the first year, two percent (2%) for the second year, and one percent (1%) for the third year of the outstanding balance of the loan; but in no event shall a prepayment penalty be assessed against a borrower refinancing with the mortgage loan company that funded the mortgage~~[ A high-cost home loan may not contain a provision which permits the lender to charge or collect prepayment fees or penalties more than thirty-six (36) months after the loan closing or which exceed three percent (3%) of the amount prepaid during the first twelve (12) months, two percent (2%) of the amount prepaid during the second twelve (12) months, or one percent (1%) of the amount prepaid during the third twelve (12) months].~~

- (b) A high-cost home loan may not contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule:~~[-]~~
- (c) A high-cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower:~~[-]~~
- (d) A high-cost home loan may not contain a payment schedule with regular periodic payments that cause the principal balance to increase:~~[-]~~
- (e) A high-cost home loan may not contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the

loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.~~;~~ ~~}~~

- (f) A high-cost home loan may not include 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.~~;~~ ~~}~~
- (g) A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless the fees are less than one-half (1/2) of any fees that would be charged for a refinance or unless the borrower is in default and it is in the borrower's best interest.~~;~~ ~~}~~
- (h) A lender may not make a high-cost home loan unless the borrower has been provided the following notice or a substantially similar notice, in writing, not later than the time that notice provided by 12 C.F.R. 226.31(c), as amended from time to time, is required:

NOTICE TO BORROWER

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

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. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES.

YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. YOU SHOULD CONTACT THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A LIST OF CREDIT COUNSELORS AVAILABLE IN YOUR AREA.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES 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 CREDITORS.

- (i) A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one (1) or more of the borrowers, when considered individually or collectively, will be able to make the scheduled payments to repay the loan based upon a consideration of their current and expected income, current obligations, current employment status, and other financial resources, other than the borrower's equity in the dwelling which secures repayment of the loan. A borrower shall be presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is consummated:

1. ~~1.5.~~ The borrower's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means;
  2. *The loan has been approved by an automated underwriting service offered by FNMA or Freddie MAC;*
  3. *The lender verifies and documents that the borrower has liquid assets equal to fifty percent (50%) of the principal loan amount; or*
  4. *The borrower has sufficient residual income as defined in the guidelines established in 38 C.F.R. 36.4337(e) and United States Veterans Administration form 26-6393.* ~~[No presumption of inability to make the scheduled payments to repay the obligation 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 fifty percent (50%) of the borrower's monthly gross income.]~~
- (j) If the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder, the lender may not directly or indirectly finance:
1. Any prepayment fees or penalties payable by the borrower; or
  2. Points and fees, excluding those provided for in 12 C.F.R. 226.4(c)(7), which in the aggregate are in excess of four percent (4%) of the total amount financed.
- (k) A lender or mortgage loan broker may not, within one (1) year of the consummation of a high-cost home loan, 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 on which points

were charged. A lender may not, at any time, charge a borrower points and fees in addition to those allowed by 12 C.F.R. 226.4(c)(7) if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan, on which points were charged, held by the same lender as noteholder. However, points and fees in accordance with this section may be charged on any proceeds of a high-cost home loan which are in excess of the amount refinanced on the existing high-cost home loan.

- (l) A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.
- (m) A lender shall not refinance, replace, or consolidate a zero interest rate or low interest rate loan made by a governmental or nonprofit lender with a high-cost home loan. For purposes of this paragraph, a low interest rate loan is defined as a loan that carries a current interest rate that is two (2) percentage points or more below the current yield on United States Treasury securities with a comparable maturity.
- (n) A lender shall not finance single premium credit life, credit accident, credit health, credit disability, or credit loss of income insurance in connection with a high-cost home loan.
- (o) A lender shall not make a high-cost home loan unless the lender has made available to the borrower a videotape, or other similar audio-video media format such as DVD or CD, approved by the Office of Financial Institutions, which explains the borrower's rights and responsibilities with regard to this section or high-cost home loans. A lender shall have available for viewing at

- least one (1) copy of the video in the principal office and each branch office of the lender.
- (p) A lender shall not make a high-cost home loan subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on June 24, 2003, shall be presumed not to violate this subsection.
- (q) A lender shall not charge a late payment fee on a high-cost home loan except in accordance with the following:
1. The late payment fee may not be in excess of five percent (5%) of the amount of the payment past due or ten dollars (\$10), whichever is greater;
  2. **The loan documents must specifically authorize the late payment fee;**
  - ~~3.~~ The late payment fee may only be assessed for a payment past due fifteen (15) days or more; and
  - ~~4. [3.]~~ The late payment fee may only be charged once with respect to a single late payment.
- (r) A lender may not charge a borrower a fee **for the first request of each calendar year for a written payoff calculation. Thereafter, for each subsequent request in a calendar year, the lender may charge a reasonable fee not to exceed** in excess of ten dollars (\$10) or actual costs, whichever is greater, per request for a written payoff calculation on a high-cost home loan ~~for the first two (2) requests~~ by a borrower in a calendar year.
- (s) A lender shall not initiate a foreclosure or other judicial process to terminate a borrower's interest in residential real property subject to a high-cost home

loan without first providing the borrower, at least thirty (30) days prior to the initiation of any process, written notice of default and of the borrower's right to cure. The notice shall include a statement of the amount needed to be paid by the borrower in order to cure the default and the date by which the payment is due to cure the default. If the amount needed to be paid will change during the thirty (30) day notice period, the notice shall provide information sufficient to enable a calculation of the daily change.

- (t) A lender shall not recommend or encourage default on an existing loan or other debt in connection with the closing of a high-cost home loan that refinances all or a portion of the existing loan or debt;
- (u) A lender shall not make a high-cost home loan that does not require an escrow account for taxes and insurance;
- (v) A lender shall not process the application to make a high-cost home loan, if the proceeds shall be used, in whole or in part, to repay the principal of an existing loan secured by the borrower's principal dwelling that is not a high-cost home loan, without first requiring the borrower to obtain housing counseling by a HUD-approved counselor;
- (w) A lender shall not make a high-cost home loan that allows the borrower, for any part or all of the term of the loan, to make payments that are applied only to interest and not to principal;
- (x) A lender shall provide timely notice to the borrower of any material change in the terms of a high-cost home loan if the change is made after an application has been taken but before the closing of the loan. Notice shall be deemed timely if given not later than three (3) days after the lender has learned of the change or twenty-four (24) hours before the high-cost home loan is closed, whichever is earlier. If the lender discloses a material change more than three (3) days after learning of the change but still twenty-four

(24) hours before the high-cost home loan is closed, it will not be liable for penalties or forfeitures if the lender cures in time for the borrower to avoid any damage;

(y) A lender shall not make a high-cost home loan without verifying the borrower's income and financial resources through tax returns, payroll receipts, bank records, or other similarly reliable documents, whether provided directly by the borrower or through a third party with the borrower's permission; and

(z) A lender shall not make a high-cost home loan without verifying the borrower's reasonable ability to pay all scheduled payments of principal, interest, real estate taxes, homeowner's insurance, and mortgage insurance premiums, as applicable. For loans in which the interest rate may vary, the reasonable ability to repay shall be determined based upon the following:

1. In the case of a high-cost home loan in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement; or

2. In the case of a high-cost home loan in which the rate may vary at any time during the term of the loan for any reason other than in accordance with an index, the interest charged on the loan at the maximum rate that may be charged during the term of the loan.

(3) Except as provided in paragraph (e) of subsection (2) of this section, the making of a high-cost home loan which violates any provisions of subsection (2) of this section is usurious, subject to the penalties of this chapter, and unlawful as an unfair and deceptive act or practice in or affecting commerce in violation of the provisions of KRS 367.170. The provisions of this section shall apply to any person who in

bad faith attempts to avoid the application of this section by:

- (a) The structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or
- (b) Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section; or
- (c) Any other such subterfuge.

The Attorney General, the executive director of the Office of Financial Institutions, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this chapter or KRS Chapter 367, but not both.

- (4) A lender of a high-cost home loan who, when acting in good faith, fails to comply with subsection (2) of this section, will not be deemed to have violated this section if the lender establishes that either:
  - (a) Within thirty (30) days of the loan closing the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made, at the choice of the borrower, to the loan to either:
    - 1. Make the high-cost home loan satisfy the requirements of subsection (2) of this section; or
    - 2. Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or
  - (b) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within sixty (60) days after the discovery of the compliance failure, the borrower is notified of the compliance failure, appropriate

restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, make the high-cost home loan satisfy the requirements of subsection (2) of this section or change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors.

- (c) For purposes of this subsection, "appropriate restitution" means the reimbursement by the lender of any points, fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as he or she would have been had the loan, as adjusted in accordance with paragraphs (a) and (b) of this subsection, been originally made *in accordance therewith*.
- (5) For purposes of this section, any extension of credit shall be deemed to have been made in the Commonwealth of Kentucky, and therefore subject to the provisions of this section, if the lender offers or agrees in Kentucky to lend *money* to a borrower, who is a resident of Kentucky, on real property located within the Commonwealth of Kentucky, or if such borrower accepts or makes the offer in Kentucky to borrow, regardless of the situs of the contract as specified therein. Any oral or written solicitation or communication to lend originating outside of Kentucky, but forwarded to and received in Kentucky by a borrower who is a resident of Kentucky, shall be deemed to be an offer or agreement to lend in Kentucky and, therefore, subject to this section. Any oral or written solicitation or communication to borrow originating within Kentucky, from a borrower who is a resident of Kentucky, but forwarded to and received by a lender outside of Kentucky, shall be deemed to be an acceptance or offer to borrow in Kentucky. Any oral or written offer, acceptance, solicitation, or communication to lend or borrow, made in

Kentucky to, or received in Kentucky from, a borrower who is not a resident of Kentucky, shall be subject to the provisions of this section, applicable federal law, law of the situs of the contract, or law of the residence of the borrower, as the parties may elect. The provisions of this section shall be severable and if any phrase, clause, sentence, or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "servicer" means any person or entity who currently collects or processes payments on a high-cost home loan, as that term is defined in Section 31 of this Act, regardless of whether that person or entity is the owner, the holder, the assignee, the nominee for the loan, the beneficiary of a trust, or any person acting on behalf of such person.

(2) A servicer shall:

(a) Apply payments promptly upon receipt, so long as the residential mortgage loan is still being actively processed. If a payment is received on a Saturday, a Sunday, or any day when the servicer's principal place of business is not open or after 1 p.m. on a business day, it shall be considered promptly applied if applied on the next regular business day;

(b) Apply payments first to interest and principal currently due, then to late fees currently due, then to other fees and charges currently due, and then to additional principal, as applicable;

(c) Assess any fee which is otherwise legal under this section within thirty (30) days of the date on which the fee was accrued and disclose any assessed fee clearly and conspicuously in the next periodic statement provided to the borrower;

(d) Charge no late fee, if a payment is otherwise a full payment for the

applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment; and  
(e) Make all payments from the escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result, regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments, and disclose any payments from the escrow account clearly and conspicuously in the next periodic statement provided to the borrower.

➔Section 33. KRS 367.420 is amended to read as follows:

- (1) Except for home solicitation sales on loans in which a security interest is taken in the principal dwelling of the buyer as provided in subsection (6) of this section, and except as provided in subsection (5) for other goods and services, including all other consumer loans, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this part.
- (2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.
- (3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.
- (4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.
- (5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

- (a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and
  - (b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.
- (6) For home solicitation sales on loans in which a security interest is taken in the principal dwelling of the buyer, the buyer shall have the right to rescind or cancel the transaction until midnight of the ~~tenth~~<sup>third</sup> business day following the later of the consummation of the loan transaction or the delivery of the material disclosures required under the Truth in Lending Act, 15 U.S.C. 1601 et seq.

➔Section 34. KRS 286.8-275 is amended to read as follows:

- (1) Any person having knowledge or believing that a violation of this subtitle or any other illegal act or practice is being or has been committed may provide the executive director a report of information pertinent to his or her knowledge or belief and any additional relevant information the executive director may request.
- (2) Documents, materials, or other information in the possession or control of the executive director that is provided according to this ~~section~~<sup>subtitle</sup> shall be confidential by law, privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any civil action unless, after written notice to the executive director and a hearing, a court of competent jurisdiction determines the executive director would not be unduly prejudiced.
- (3) Neither the executive director nor any person who received documents, materials, or other information while acting under the authority of the executive director shall be permitted or required to testify in any civil action concerning any confidential documents, materials, or other information subject to subsection (2) of this section.
- (4) In order to assist in the performance of the executive director's duties, the executive

director may:

- (a) Use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the executive director's official duties;
  - (b) Share the documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsections (2) and (3) of this section, with other state, federal, and international law enforcement authorities or the Conference of State Bank Supervisors or its affiliate if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, and other information; and
  - (c) Enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.
- (5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the executive director under this section or as a result of sharing as authorized in subsection (4) of this section.

➔Section 35. Whereas an epidemic of unscrupulous, unethical, and illegal practices has engulfed the mortgage industry in the Commonwealth of Kentucky and across the United States, causing an unprecedented rise in the filing of foreclosure actions and bankruptcies, resulting in citizens facing financial ruin and the loss of their homes, and whereas, it is necessary for the General Assembly to act swiftly and decisively to protect Kentucky citizens and to ensure the safety, soundness, and reputation of the mortgage industry, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.