

MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW

The following is a synopsis of the Mortgage Legislation for Mississippi, Section 81-18-1 et seq, Mississippi Code of 1972, Annotated, to be known as the Mississippi Mortgage Consumer Protection Law (MMCPL). The original bill has been amended, most recently signed by Governor Barbour effective as of July 1, 2007. This synopsis will include pertinent definitions and to this point, the most frequently asked questions about the law.

Definitions:

"Borrower" means a person who submits an application for a loan secured by a first or subordinate mortgage or deed of trust on a single- to four-family home to be occupied by a natural person.

"Loan originator" means an individual who is an employee of a single mortgage broker or mortgage lender who works from one licensed location and whose conduct of the mortgage business is the responsibility of the company, and whose job responsibilities include direct contact with borrowers during the loan origination process, which may include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, assisting with the preparation of loan applications or other documents, quoting loan rates or terms, or providing required disclosures. This individual must work for a licensed company and work from the licensed location with the department. The term does not include individuals whose job responsibilities on behalf of a company are solely clerical in nature, which is defined as normal office procedures, not including any duties listed in the definition of "loan originator," or sales representatives of a licensed Mississippi manufactured housing operation who transmits information concerning a sale via mail, courier service, or electronically to a licensed mortgage company or registered originator.

"Company" means a licensed mortgage broker or mortgage lender under this chapter.

"Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust or other document representing a

security interest or loan upon any interest in a lot intended for residential purposes, or single- to four-family residential property located in Mississippi, regardless of where made, including the renewal or refinancing of any loan.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust or any other group of individuals, however organized.

"Residential immovable property" means property such as, but not limited to, vinyl siding, roofs, pools, spas, appliances, windows, home additions, landscaping, fencing, etc.

"Residential property" means improved real property or lot used or occupied, or intended to be used or occupied, as a residence by a natural person.

"Service a mortgage loan" means the collection or remittance for another, the right to collect or remit for another, or the collection of the company's own loan portfolio, whether or not the company originated, funded or purchased the loan in the secondary market, of payments of principal and interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

Where can I obtain a copy of the MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW?

It can be obtained from this website by clicking on "Mississippi Mortgage Consumer Protection Law" or by contacting the Department at 1-800-844-2499 and a copy will be mailed for a nominal fee.

Who must be licensed or registered?

Unless specifically exempt, as stated in the law, any person who engages in residential mortgage lending activity in connection with residential real estate located in Mississippi, must obtain a mortgage company license and/or register as an originator. This includes both first and second mortgage loans on residential property, reverse mortgages, etc. Commercial mortgages are not regulated at this time by the Mississippi Mortgage Consumer Protection Law.

Who is exempt from licensure or partially exempt from licensure?

There are several. They are detailed in Section 81-18-5, MS Code of 1972, Annotated. The following are the major exemptions or partial exemptions:

Any person authorized to engage in business as a bank, credit card bank, savings bank, savings institution, savings and loan association, building and loan association, trust company or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured, or any wholly owned subsidiary thereof, are totally exempt from the MMCPL.

Wholly owned subsidiaries of a financial holding company or a bank holding company are exempt from the Mississippi Mortgage Consumer Protection Law; **however**, must file a "Notification Statement" with the Department before operating in the state of Mississippi. This notification statement may be obtained from this website or by contacting the Department at 1-800-844-2499. Subsidiaries that are not wholly owned or affiliates are NOT included in the exemption.

Any lender holding a license under the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law, and making real estate loans under that law is exempt from this act. However, those lenders holding these licenses and making real estate loans outside that law shall be subject to the entire provisions of this law, unless otherwise exempted under MMCPL.

Nonprofit corporations exempt from federal taxation under Section 501(c) of the Internal Revenue Code making mortgage loans to promote home ownership or home improvements for the disadvantaged.

Any person who is employed by and representing a Mississippi manufactured housing operation and who makes a mortgage loan on manufactured housing and land transactions, modular homes or any combination thereof; any person who engages in owner financing or engaged in the financing of a consumer loan secured by a mortgage on residential immovable property in not more than twelve (12) Mississippi residential mortgage loans, or who contracts for no more than twelve (12) Mississippi residential loan transactions, over the licensing period provided in the act, including those acting as loan originators. Although exempt from being licensed, these transactions must be submitted to the Commissioner on a department form along with a fee of \$10.00 per transaction and must be in compliance with all applicable state and federal

laws. This form may be downloaded from this website or by contacting the department at 1-800-844-2499. **Please note that this exemption does not include persons solely involved in the making of a mortgage loan on modular homes.**

If my company holds a registration certificate with the Department, do I now have to be licensed?

Yes, as of July 1, 2007, Registration Certificates will no longer be issued by the Department. Any company applying to conduct business in Mississippi after this time will have to obtain either a Mortgage Broker or Mortgage Lender License. If the company held a Registration Certificate before July 1 2007, then the change to a license will be required before the surety bond expiration of 9/30/07 or December 31, 2007, whichever comes first.

Where do I find the Applications for Licensure?

All applications can be downloaded from the Department's website www.dbcf.state.ms.us under the Mortgage Division link, then Mortgage Applications. However, fingerprint cards are required with the Mortgage Broker or Lender License application for all owners who own 10% or more of the company and the named principal officer (person who shows at least two years of previous mortgage lending experience). The fingerprint cards must be provided by the Department – a fingerprint card from a police station will not be accepted and will cause the application to be returned.

How do I request fingerprint cards to be mailed to me?

You may request the number, along with the mailing address, in writing, by fax 601-359-3557 or by email danielle@dbcf.state.ms.us. **Also, due to quality control standards implemented by the FBI and to avoid delay in processing, it is imperative that the fingerprints are precise and kept within the box on the card.** Also, all personal information including social security number, height, weight, eye color, hair color, date of birth and place of birth MUST be completed. If this information is not included on the card, the application will be returned to the licensing contact for the company on file with the Department. No phone call will be placed.

If my company only services mortgage loans on Mississippi residential property, do I have to get a license?

YES, according to the definition of a Mortgage Lender in Section 81-18-3(s), MS Code of 1972, Annotated, any company who services mortgage loans is defined as a Mortgage Lender and must be licensed as a Mortgage Lender, providing the Department with the surety bond of the Mortgage Lender, \$150,000. This is also covered in the definition of “Service a Mortgage Loan” in Section 81-18-3(ee), MS Code of 1972, Annotated.

If my company only wants to make one loan in Mississippi, can I get an exemption?

No, the MMCPL does not provide for a de minimus provision. If a company wishes to fund or originate one loan on Mississippi residential property, then the company must be licensed or qualify for an exemption outlined in the MMCPL.

What are the MMCPL licensure qualification requirements?

Refer to the Applications available on the website for specific requirements.

What is required to be eligible for licensing for a regular mortgage license?

The following:

Documentation of a minimum of two (2) years' experience directly in mortgage lending by a person named as principal officer of the company (need not be an owner). This experience shall have been within the previous four (4) years from the date of application. If the experience was not in Mississippi, then the principal officer must complete four (4) hours of approved courses on the MMCPL. Documentation includes copies of other state licenses, letters from previous employers, etc. A resume alone is not sufficient proof of experience. The “principal officer” must also hold a Loan Originator’s Registration. **For the principal officer’s experience requirement, there is no longer an examination or education waiver for experience.**

A surety bond, made payable to the State of Mississippi, in the amount set forth in Section 81-18-11, MS Code of 1972, Annotated, from an insurance company

authorized to conduct business in Mississippi. There are now two surety bond amounts – Mortgage Broker for \$25,000 and Mortgage Lender for \$150,000.

The department shall not issue a license if it finds that the applicant (includes owners and loan originators), or any person who is a director, officer, partner, or principal of the applicant, has been convicted of a felony in any jurisdiction or has been convicted of a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. This is now a lifetime background check. **Please note:** If a person possessed a license or registration as of July 1, 2007 and has a felony or misdemeanor as noted above in their background check that was more than 10 years at the time of application, then he/she will be able to renew that license or registration. However, if the person changes companies, causing an Initial Application to have to be completed, then the application will be denied based on the background check.

The location of the mortgage company in the state of Mississippi must comply with the office requirements outlined in Section 81-18-25, MS Code of 1972, Annotated.

What are loan originator registration qualification requirements?

Must be employed by a single Mississippi licensed or registered mortgage company. A loan originator CANNOT work for more than one company at the same time.

The person must show proof of at least one (1) year of experience directly in mortgage within the two (2) years prior to the date of application. If the experience did not occur within the state of Mississippi, then the Department shall require the person to complete an education course of a minimum of four (4) hours covering the MMCPL. If the person does not meet the experience requirement, then he/she shall complete a minimum of twenty-four (24) hours of approved educational courses, four (4) of which must cover the MMCPL. For renewals, each loan originator must furnish evidence of 12 hours of continuing education per year, two (2) of the hours consisting of courses covering the MMCPL. A listing of approved continuing education courses is available on this website.

The department shall not issue a registration if it finds that the applicant has been convicted of a felony or a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction.

Where or who do I contact for continuing education information?

There is a listing of approved continuing education providers located separately on this website. **ONLY** these providers are approved for continuing education purposes. If you are a provider of continuing education, you will need to contact the Mississippi or National Chapters of the Mortgage Brokers Association and/or the Mortgage Bankers Association.

Can a mortgage company or sole proprietorship employ unregistered originator(s)?

No. Any employee acting within the jurisdiction of the definition of a loan originator must be registered as an originator and work from one licensed location.

Can an "originator" be employed by more than one mortgage company?

No. An originator cannot be employed by more than one Mississippi licensed company. If he/she is working for more than one company, he/she is considered brokering and must obtain a residential mortgage broker or lender license.

Must there be a registered originator at each location where residential mortgage lending activity is conducted?

Yes. Every person originating loans from a location must be registered under the MMCPL and must have previously stated on the registration application that they will be originating loans from that location. No one is permitted to originate loans from a location other than the one(s) registered, including the person's home.

As a loan originator, can I work from my house?

You may only work from a licensed location of the company.

How long does it take to process an application?

It varies - depending on the background check process and if the application is complete.

What does a MMCPL license or originator registration cost?

- \$750 for new license application fee for Mortgage Broker or Mortgage Lender License
- \$475 for annual license renewal
- \$100 initial registration for each additional office and \$25 annual renewal
- \$100 for new originator license and \$50 annual renewal
- \$100 for initial notification statement and \$100 for annual renewal
- \$750 for change of ownership over 25%
- \$ 25 for change of address, change of name, duplicate copy of any license

When do the license and registration expire?

Licenses and Loan Originator Registrations expire on December 31 of the year immediately following the year issued or filed. The renewal application and fee are due on or before December 31 to avoid late penalties. This is a change from the previous year of September 30.

How do I renew my company license, branch license or loan originators registration?

Information concerning the renewal will be forwarded to the company's licensing contact approximately 2-3 months before the expiration date of the license.

What if renewal applications and fees are submitted late?

Annual license/registration renewal applications and fees are considered late if not received by the Department on or before December 31. A late fee of \$25 per day is assessed for the company's license, as well as the renewal price of the license/registration increasing to the initial amount of the license/registration.

Do I have to renew the company's branch licenses?

Yes, all branch licenses must be renewed with the company's license as well as loan originator's registrations.

When will I receive the renewal forms for the licenses?

These forms are mailed to the licensing contact of the company on file with the Department approximately 2-3 months prior to renewal deadline.

Is my license transferable to someone else?

No license shall be sold or otherwise transferred. No person shall acquire or control a license to make or broker residential mortgage loans through the acquisition or control of twenty-five percent or more of the ownership interest in a licensee without first following the requirements set in Section 81-18-19, MS Code of 1972, Annotated.

What if an originator receive a Form 1099 for services rendered and not a W-2?

Anyone receiving a Form 1099 from a licensed mortgage company and provides a service to only one mortgage company is considered an exclusive agent and requires an originator's license. Anyone meeting the definition of an originator except that they provide origination services to more than one person shall be deemed to be acting as a mortgage broker or lender and must be licensed as such. The MMCPL does not distinguish between 1099 and W-2 compensated employees.

What kind of license do I need if I only broker loans?

A mortgage broker license is required if the person is engaging in residential mortgage lending activity which includes brokering residential mortgage loans. The surety bond that must be on file defines the classes of companies, which are Mortgage Broker and Mortgage Lender.

If I operate only on the Internet, do I need a license?

Yes. The definition of residential mortgage lending activity includes electronic activity, engaged in for compensation, or with the expectation of compensation in connection with a residential loan transaction.

Can I co-broker loans with another Mississippi licensed mortgage company?

Yes, according to Section 81-18-27(2), MS Code of 1972, Annotated, co-brokering is allowed provided that both companies are licensed or are exempt

from licensing in Mississippi as a company. For example, a licensed mortgage broker or lender may co-broker a loan with a state or federally chartered bank or with another licensed mortgage broker or lender.

Can I pay someone a “finders fee”?

According to Section 81-18-27(k), MS Code of 1972, Annotated, a company may **not** “pay to any person not licensed nor exempt any commission, bonus or fee in connection with arranging for or originating a mortgage loan for a borrower, except that a registered loan originator may be paid a bonus, commission or fee by his or her licensed employer.”

Is there an audit or review?

Yes, the Department shall have the right to examine the books, accounts and records necessary to determine whether or not the licensee is in compliance with the MMCPL and to investigate complaints. The routine examination fee will be no less than \$300 and no more than \$600. Additional fees may be charged to companies for complaint investigations or for additional examinations, if warranted, due to numerous violations of State law or other egregious conduct. This may be done **with or without notice** at any time during normal business hours.

Is there an in-state office requirement?

No. However, if the company does have a Mississippi office, it must meet the requirements outlined in Section 81-18-25, MS Code of 1972, Annotated.

Are there any restrictions as to where business can be conducted?

Yes, there are restrictions including evidence that the location is in conformance with zoning. No licensee shall conduct residential mortgage lending activities under any name or from any location other than the one stated on its license.

Am I required to display my license at each location?

Yes. The ORIGINAL license must be displayed. You will receive one license with the principal location address. You must pay a \$100 fee for each branch location and prominently display a license at each branch office listed in your application. Also, each loan originator is required to prominently display his/her registration at the office location where he/she works.

Can I add or change locations? Can I change my name? If so, what are the fees?

A mortgage company who holds a mortgage license shall notify the commissioner of a change in the location or name of the business, or the addition of offices, in writing **prior** to the change, at a minimum of thirty (30) days. A filing fee of \$25 shall accompany a Change of Address Application or Change of Name Application. For the addition of offices, a \$100 fee is required, as well as completion of a Application for Branch Office. The application forms for making these additions/changes are located on this website or may be obtained by calling 1-800-844-2499. A Change of Address form must be completed for each loan originator registered at that location and the \$25.00 fee will apply.

Is there any type of annual report that I as a company must file?

Yes, an annual report must be completed by each licensed mortgage broker and lender and forwarded to the Department by March 31 of each year. This has changed from the previous year due date of January 31. The company will be notified of the Annual Report format.

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