

MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT (EXCERPT)
Act 173 of 1987

445.1652 Mortgage broker, mortgage lender, or mortgage servicer; license or registration required; exemption; application; compensation or other remuneration; words contained in name or assumed name; "employee" defined.

Sec. 2.

(1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license under this act or registering under section 6, unless 1 or more of the following apply:

(a) The person is providing loan officer services as an employee or agent of only 1 mortgage broker, mortgage lender, or mortgage servicer and a licensed loan officer if that licensure is required under the mortgage loan originator licensing act.

(b) The person is exempted from the act under section 25.

(c) The person is licensed as a class I licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(d) The individual is an employee of a professional employer organization, as that term is defined in section 113 of the Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting as a residential mortgage originator of only 1 mortgage broker or mortgage lender. The mortgage broker or mortgage lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 4.

(2) A person that is licensed to make regulatory loans under the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, or is licensed to make secondary mortgage loans under the secondary mortgage loan act, and is registered with the commissioner shall file with the commissioner an application for a license under section 3(1) or shall discontinue all activities that are subject to this act.

(3) A loan officer shall not directly or indirectly receive any compensation, commission, fee, points, or other remuneration or benefits for originating a mortgage loan unless both of the following are met:

(a) The loan officer is a licensed loan officer.

(b) The compensation, commission, fee, points, or other remuneration or benefits are paid by the licensee or registrant for which the loan officer originated that mortgage loan.

(4) A mortgage broker, mortgage lender, or mortgage servicer shall not directly or indirectly pay any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

(a) A loan officer who is not a licensed loan officer.

(b) A licensed loan officer who is not an employee or agent of that mortgage broker, mortgage lender, or mortgage servicer.

(5) A mortgage broker, mortgage lender, or mortgage servicer that is exempt from regulation under this act and is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company that does not maintain a main office or branch office in this state, shall register under section 6 or shall discontinue all activities subject to this act.

(6) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, the person subject to this act shall not include in its name or assumed name, the words "bank", "banker", "banking", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee or registrant to use the term "mortgage banker" or "mortgage banking" in its name or assumed name. A person subject to this act whose name or assumed name on January 1, 1995 contained a word prohibited by this section may continue to use the name or assumed name.

(7) As used in this section, "employee" means that term as defined in section 3401 of the internal revenue code, 26 USC 3401.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987 ;-- Am. 1988, Act 159, Eff. Sept. 1, 1988 ;-- Am. 1996, Act 210, Imd. Eff. May 22, 1996 ;-- Am. 2002, Act 4, Imd. Eff. Feb. 7, 2002 ;-- Am. 2005, Act 113, Imd. Eff. Sept. 22, 2005 ;-- Am. 2007, Act 179, Imd. Eff. Dec. 21, 2007 ;-- Am. 2008, Act 59, Imd. Eff. Apr. 3, 2008 ;-- Am. 2008, Act 328, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 76, Eff. July 31, 2010

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan Compiled Laws.

