

THE SECONDARY MORTGAGE LOAN ACT (EXCERPT)
Act 125 of 1981

493.52 Broker, lender, or servicer; license or registration required; exemption; use of name or assumed name.

Sec. 2.

(1) A person shall not act as a broker, lender, or servicer without first obtaining a license under this act or registering under section 3a, unless 1 or more of the following apply:

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

(b) The person is licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(c) The person acts as a lender but makes or negotiates 2 or fewer secondary mortgage loans in a calendar year.

(d) The person acts as a servicer but services 10 or fewer secondary mortgage loans in a calendar year.

(e) The person is an individual and 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 secondary mortgage loan originator of only 1 broker or lender. The broker or 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 6.

(2) By October 31, 1997, a servicer that was exempt from regulation under this act shall either file with the commissioner an application for a license or registration under section 3 or discontinue all activities subject to this act.

(3) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, a person subject to this act shall not include in its name or assumed name the words "bank", "banker", "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 to use the term "mortgage banker" or "mortgage banking" in its name or assumed name.

(4) A person subject to this act whose name or assumed name on January 1, 1997 contained a word prohibited by subsection (3) may continue to use that name or assumed name.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 164, Eff. Sept. 1, 1988 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2007, Act 46, Imd. Eff. July 17, 2007 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, 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.

Popular Name: Secondary Mortgage Loan Act