

CHAPTER 218**(HB 462)**

AN ACT relating to mortgage banking.

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

Section 1. KRS 294.010 is amended to read as follows:

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 financial institutions;
- (4) "Mortgage loan" means any loan secured by a mortgage on residential real property or any loan secured by collateral which has a mortgage lien interest in residential real property;
- (5) "Residential real property" means any single family residence or multiple dwelling structure containing four (4) or less single dwelling units for four (4) or less family units, living independently of each other, or any single family condominium unit;
- (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 gain, 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 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) "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) "Loan processor" means an individual who works under the instruction of a 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
- (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.

Section 2. KRS 294.020 is amended to read as follows:

- (1) The following shall be exempt from this chapter:
- (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 savings and loan associations, ~~consumer loan or finance company, industrial loan company,~~ 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 or affiliate, or any mortgage loan broker, loan officer, originator, or loan processor employed by any such person, or by a subsidiary or affiliate of any *person* ~~institution~~ listed in this paragraph ~~if the institution maintains a place of business in Kentucky~~;
 - (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 ~~Kentucky~~ 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); ~~and~~
 - (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 KRS Chapter 288 or 291 whose primary business is originating consumer or industrial loans as provided under KRS Chapter 288 or 291, 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 paragraphs (e) and (f) of subsection (2) of Section 6 of this Act and KRS 294.110(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, except that any mortgage loan broker, loan officer, or originator who is an employee of a mortgage loan company, mortgage loan broker, or a nonprofit organization shall be subject to the provisions of Sections 7 and 8 of this Act.*
- (2) The following shall be exempt from all the provisions of this chapter except that they shall be subject to the examination or investigation provisions of KRS 294.170(4), (5), and (6), 294.180, and 294.190 if it appears on grounds satisfactory to the executive director ~~on written complaint,~~ that an examination or investigation is necessary; and they shall be subject to the prohibited acts provisions of KRS 294.220; 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 294.255 and 294.260:
- (a) A mortgage loan *company* ~~companies~~ or mortgage loan *broker approved and* ~~brokers~~ regulated by the *United States* Department of Housing and Urban Development *to perform business in this Commonwealth*;
 - (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 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)(e)~~ 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;
- ~~[(d) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate;]~~ 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 person relying upon an exemption under subsection (1)(h), (2)(a), ~~(b)(e)~~, or (d) of this section shall file with the executive director a claim of exemption. The executive director shall ~~allow~~**allow** ~~[thereafter determine the availability of the claimed exemption and he shall not disallow]~~ an exemption that is validly claimed.
- (4) ***Any person relying upon an exemption under paragraph (a) or (b) of subsection (2) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky properties each year in order to maintain its exemption.***
- (5) ***Any person relying upon an exemption under paragraph (a) or (b) of subsection (2) 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)(5)~~ (a) Any natural person making a loan under subsection (2)(c) ~~(b)~~ 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)(c) ~~(b)~~ of this section making less than five (5) mortgage loans per year.
- (8) ***Any person relying upon an exemption under paragraph (a) or (b) of subsection (2) 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 January 15 of each year on a form prescribed by the executive director.***

Section 3. KRS 294.032 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.
- (2) The application shall:
- (a) Be sworn to;
- (b) State the name of the applicant and each of the applicant's affiliates 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 location of the applicant's principal office and branch 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 294.060;
 - (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) Require payment of the appropriate registration fees; and
 - (j) 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)**~~five hundred thousand dollars (\$500,000)~~. If a mortgage loan company has a net worth in excess of **one million dollars (\$1,000,000)**~~five hundred thousand dollars (\$500,000)~~, 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 chapter, subject to the applicable registration requirements of KRS 294.255 and 294.260.
- (5) If a licensee desires to establish a branch office in Kentucky not already approved, the licensee shall file a registration statement with the executive director that includes the address and telephone number of the branch office, the name of the prospective manager, the anticipated opening date, and any other information 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. 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.
- ~~(8)~~~~(7)~~ (a) On and after June 24, 2003, the application for a mortgage loan broker license shall state the address of the physical location where the business is to be located in compliance with KRS 294.250 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 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) The information required by paragraph (a) of this subsection shall be required for renewals of existing licenses which will expire on June 30, 2004~~, and for all renewals of licenses thereafter~~.
- (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.

Section 4. KRS 294.060 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)* ~~one hundred thousand dollars (\$100,000)~~ for mortgage loan companies and not less than fifty thousand dollars (\$50,000) for mortgage loan brokers. Every bond shall provide for suit thereon by any person who has a cause of action under this chapter. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond. 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.

- (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.
- (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 chapter, the order to be complied with within thirty (30) days following service thereof upon the registrant.

Section 5. KRS 294.090 is amended to read as follows:

- (1) The executive director may ~~deny,~~ suspend, ~~or~~ 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 applicant, licensee, mortgage loan company, mortgage loan broker, or loan officer*** ~~any license when the applicant or licensee~~:
- (a) ~~(1)~~ Does not meet or has failed to comply with the requirements of this chapter;
 - (b) ~~(2)~~ 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) ~~(3)~~ Does not conduct his business in accordance with law or the method of business includes or would include activities which are illegal where performed, or has willfully violated any provision of this chapter or any regulation hereunder;
 - (d) ~~(4)~~ Collects interest at a usurious rate;
 - (e) ~~(5)~~ Is in such financial condition that he cannot continue in business with safety to his customers;
 - (f) ~~(6)~~ Has been guilty of fraud in connection with any transaction governed by this chapter, 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) ~~(7)~~ Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of acting as a mortgage loan company or mortgage loan broker, or has engaged in a course of business which has worked or tended to work a fraud upon any person or would so operate;
 - (h) ~~(8)~~ Has ~~knowingly~~ 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 which the applicant or licensee ***or mortgage loan broker or loan officer*** possesses, and which if submitted by him

would have rendered the applicant or licensee *or mortgage loan broker or loan officer* ineligible to be licensed *or registered* under this chapter;

- (i)~~{(9)}~~ Has failed to account to persons interest for all funds received for the escrow account required under KRS 294.130;
 - (j)~~{(10)}~~ Has refused to permit an examination 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 chapter;
 - (k)~~{(11)}~~ 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;~~{or}~~
 - (l)~~{(12)}~~ Has had any license *or registration* related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state or the United States, *or has surrendered or terminated any license or registration 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.*
- (2) *Persons whose license, registration, or claim of exemption has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section are prohibited from participating in any business activity of a registrant or licensee under this chapter and from engaging in any business activity on the premises where a licensee or registrant under this chapter 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 chapter 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 chapter after such person's license, registration, or claim of exemption has been revoked, suspended, or denied shall be subject to the penalties in KRS 294.990 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 chapter 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 chapter 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 chapter.*
 - (7) *The provisions of this section shall be in addition to any other penalties or remedies available, including the penalties of KRS 294.990.*
 - (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 chapter.*
 - (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 chapter, 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 chapter shall be held in contempt of court.

Section 6. KRS 294.220 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 chapter, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.
- (2) It shall be unlawful for any mortgage loan company or mortgage loan broker, 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 which 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)**~~two (2)~~ 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 KRS 294.020, and, if required by KRS 294.020(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 mortgage loan business in 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 chapter.

Section 7. KRS 294.255 is amended to read as follows:

- (1) Beginning July 1, 2004, and annually thereafter, no mortgage loan broker and no loan officer shall originate mortgage loans in Kentucky unless such mortgage loan 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 registry of all mortgage loan brokers and loan officers originating mortgage loans in Kentucky. The office shall issue a certificate of registration to all registered mortgage loan 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 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;
 - (c) In the case of initial registrations of loan officers **or mortgage loan brokers**, be accompanied by satisfactory evidence that the applicant has successfully completed twelve (12) classroom hours of education courses related directly to the mortgage loan process or brokerage business, as approved by the executive director. This paragraph shall not apply to renewals of existing certificates of registration; and
 - (d) Beginning July 1, 2005, in the case of renewals of certificate of registrations by registered mortgage loan brokers and registered loan officers, be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of KRS 294.260 and by a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the office to establish and maintain 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) *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 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 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 complete. No more than one (1) temporary certificate of registration will be issued within an eighteen (18) month period.*
- (4) *A certificate of registration 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.*
- (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.*
- (6) All mortgage loan brokers and loan officers subject to the registration requirements of this section shall also be subject to KRS 294.090(1)(a), (c), (f), (g), (h), (j), (k), (l), (m), and (n)~~[(3), (6), (7), (8), (10), (11), and (12)]~~, 294.220(1) and (2), and 294.990.

Section 8. KRS 294.260 is amended to read as follows:

- (1) Beginning July 1, 2004, all registered 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 July 1 and end on June 30 of the following year.
- (3) *The completion of the educational requirement in the case of initial registrations under paragraph (c) of subsection (2) of Section 7 of this Act 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)(4)~~ Every registered 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)(5)~~ Only courses approved by the office shall qualify to satisfy the continuing professional education requirement of this section.
- ~~(7)(6)~~ 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 loan officer taking and satisfactorily completing the course.
- ~~(8)(7)~~ 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*~~[one (1) year]~~. What constitutes good cause for the extension of time rests within the discretion of the executive director.
- ~~(9)(8)~~ The certificate of registration of any mortgage loan 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)(7)~~ of this section shall *expire*~~[terminate]~~ 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. ~~[- The executive director may reinstate the certificate of registration if the mortgage loan broker or loan officer submits proof of compliance with the professional education requirements and pays a reinstatement fee in the amount of two hundred fifty dollars (\$250).-]~~

SECTION 9. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person having knowledge or believing that a violation of this chapter 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 chapter 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 10. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) *In the absence of malice, fraud, or negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the executive director.*
- (2) *This section shall not abrogate or modify any common law or statutory privileges or immunity enjoyed by any person.*

Section 11. KRS 294.030 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 chapter and registered in accordance with KRS 294.255, unless that person is exempt under KRS 294.020 and, if required by KRS 294.020(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.
- (b) It is unlawful for any natural person to make a loan under KRS 294.020(2)(c)~~[(b)]~~ without making the disclosure required by KRS 294.020(7)~~[(5)]~~.
- (c) It is unlawful for any loan officer, unless otherwise exempted, to originate mortgage loans in Kentucky if the loan officer is not registered in accordance with KRS 294.255.

- (2) Neither the fact that a license has been issued nor the fact that any person, business, or company is effectively registered, constitutes a finding by the executive director that any document filed under this chapter is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant 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 12. KRS 294.034 is amended to read as follows:

- (1) An applicant for a license under this chapter 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 in Kentucky if the applicant applies for a license on or between 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 January 1 and June 30.
- (2) A license under this chapter 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 fee for renewing a license which is three hundred fifty dollars (\$350) for the main office and two hundred fifty dollars (\$250) for each branch 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 294.032(8)~~(7)~~.
- (4) The information and payment shall be received by the executive director on or before June 20 prior to the June 30 expiration date. The executive director may reinstate the license if the licensee pays the filing fee and a reinstatement fee of two hundred fifty dollars (\$250).
- (5) The 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 13. KRS 294.250 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 294.032(8)~~(7)~~.
- (2)
 - (a) Each mortgage loan broker licensed under this chapter shall maintain a physical location in this state.
 - (b) Any mortgage loan broker licensed under this chapter 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 chapter 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.
- (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 14. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

In addition to other duties imposed upon the executive director in this chapter, the executive director shall be authorized to participate in the establishment and implementation of a multistate automated licensing system for mortgage loan brokers, mortgage loan companies, loan officers, or originators. For such purpose, the executive director is authorized to waive or modify, in whole or in part, by rule or by order, any or all of the requirements of

this chapter and to establish new requirements as reasonably necessary to carry out the purpose of this section. These new requirements shall include the fingerprinting of applicants and the submission of those fingerprints, along with any fee required to perform the criminal background record review, to the Federal Bureau of Investigation and Kentucky State Police or an equivalent state department law enforcement agency for state and national criminal background record review of the applicant. The executive director shall not be authorized under this section to require a person or individual who is exempt under subsection (1)(a) or (g) of Section 2 of this Act to submit information or participate in the uniform multistate licensing program.

Section 15. The following KRS section is repealed:

294.265 Denial, suspension, or revocation of license of mortgage loan company, mortgage loan broker, or loan officer.

Approved April 21, 2006.