

## CHAPTER 125

## ( HB 643 )

AN ACT relating to the regulation of the mortgage loan industry.

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

➔Section 1. 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, ~~for~~ is controlled by, or is under common control with another person;
- (2) "*Alternate work location*":
- (a) *Means a physical location, other than the principal office or a branch, at which the employees of a licensee are authorized by the licensee to remotely engage in the mortgage lending process; and*
- (b) *May include a physical location, other than the principal office or a branch, where an employee:*
1. *Completes mortgage-related activities if the location is not maintained or utilized for the purpose of conducting in-person mortgage lending business; and*
  2. *Meets in person at the convenience of the borrower on an infrequent or as-needed basis in order to complete the mortgage lending process if the location is not the employee's home*~~["Department" means the Department of Financial Institutions];~~
- (3) ~~["Commissioner" means the commissioner of the department;~~
- ~~(4) "Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle;~~
- ~~(4)(5) "Borrower" means any person that seeks, applies for, or obtains a mortgage loan;~~
- ~~(5)(6) "Branch" or "branches":~~
- (a) ~~Means any location, other than the mortgage loan company's or mortgage loan broker's principal office~~~~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, including the servicing of mortgage loans; **and**
- (b) ~~Shall not include an alternate work location;~~
- ~~(6)(7) (a) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course.~~
- (b) ~~Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;~~
- ~~(8) "Clerical or support duties" means administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:~~
- (a) ~~The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or~~
- (b) ~~Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, assisting a borrower or prospective borrower with the preparation of documents necessary to obtain a mortgage loan, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;~~
- ~~(7)(9) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise;~~
- ~~(10) "Control records" means all records relating to the operation of a branch that are necessary to exercise control and supervision over the branch;~~

- (8)~~(11)~~ "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;
- (9)~~(12)~~ "Depository institution" means a depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. sec. 1813(c), and amendments thereto, and includes any credit union;
- (10)~~(13)~~ "Employ or use" means to employ, utilize, or contract with a person or the person's employees for the purpose of participating in the mortgage lending process, including the servicing of mortgage loans;
- (11)~~(14)~~ "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild;
- (12)~~(15)~~ "Licensee" means a person to whom a license has been issued;
- (13)~~(16)~~ "Managing principal" means a natural person who:
- (a) Meets the requirements of KRS 286.8-032(6); and ~~who~~
  - (b) Agrees to actively participate in and be primarily responsible for the operations of a licensed mortgage loan broker;
- (14)~~(17)~~ "Mortgage lending process":
- (a) Means the process through which a person seeks or obtains a mortgage loan; ~~and including~~
  - (b) **Includes** the solicitation, application, origination, negotiation of terms, processing, 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];~~
- (15)~~(18)~~ "Mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on residential real property or any loan primarily for personal, family, or household use that is secured by collateral that has a mortgage lien interest in residential real property;
- (16)~~(19)~~ "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, serves as an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself out as being able to do so;
- (17)~~(20)~~ "Mortgage loan company" means any person who directly or indirectly:
- (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or
  - (b) Services mortgage loans, or holds oneself out as being able to do so;
- (18)~~(21)~~ "Mortgage loan originator" means a natural person who:
- (a)
    1. **Is employed by a licensee;**
    2. **Receives**~~, in exchange for~~ compensation or gain, or **expects to receive** ~~in the expectation of~~ compensation or gain; ~~and~~
    - 3.~~(a)~~ Performs any one (1) or more of the following acts in the mortgage lending process:

- a.~~{1-}~~ Solicits, places, negotiates, or offers to make a mortgage loan;
  - b.~~{2-}~~ Assists a borrower or prospective borrower with the preparation of documents necessary to obtain a mortgage loan;
  - c.~~{3-}~~ Explains, recommends, discusses, negotiates, 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;
  - d.~~{4-}~~ Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or
  - e.~~{5-}~~ Takes a residential mortgage loan application; or
- (b) Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;
- (19) (a)~~{(22)}~~ "Mortgage loan processor" means a natural person who performs only clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator.
- (b) *As used in this subsection, "clerical or support duties" means administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:*
1. *The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or*
  2. *Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:*
    - a. *Taking a residential mortgage loan application;*
    - b. *Assisting a borrower or prospective borrower with the preparation of documents necessary to obtain a mortgage loan;*
    - c. *Offering or negotiating loan rates or terms; or*
    - d. *Counseling consumers about residential mortgage loan rates or terms;*
- (20)~~{(23)}~~ "Nationwide ~~Multistate~~~~Mortgage~~ Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators;
- (21)~~{(24)}~~ "Originate" means to solicit, place, negotiate, offer to make, or broker a mortgage loan;
- (22)~~{(25)}~~ "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;
- ~~{(26)}~~ "Person" means a natural person, or any type or form of corporation, company, partnership, proprietorship, or association;
- (23)~~{(27)}~~ "Physical location" means any location where the mortgage lending process, including the servicing of mortgage loans, is conducted;
- (24)~~{(28)}~~ "Record" means any books of account or other books, papers, journals, ledgers, statements, instruments, documents, files, messages, writings, correspondence, or other internal data or information, made or received in the regular course of business or otherwise, regardless of the mode in which it is recorded;
- (25)~~{(29)}~~ "Registrant" means a person to whom a registration has been issued;
- (26)~~{(30)}~~ "Residential mortgage loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan;
- (27)~~{(31)}~~ "Residential real property" means a dwelling as defined in the Federal Truth in Lending Act, 15 U.S.C. sec. 1602(w)~~{(v)}~~, or any real property upon which is constructed or intended to be constructed a dwelling as so defined;
- (28)~~{(32)}~~ "Service" or "servicing" means:

- (a) Receiving any scheduled periodic mortgage loan payments from a borrower, including amounts for escrow accounts or other fees or obligations related to the mortgage loan, and making or crediting the payments to the mortgage loan account, owner of the loan, or a third party assigned to receive said payments;
  - (b) Maintaining accountings of principal, interest, and other accounts associated with the servicing of mortgage loans and responding to borrower inquiries regarding the status of these loans or accounts;
  - (c) Initiating, supervising, or conducting foreclosure proceedings and property dispositions in the case of default, except "*service*" or "*servicing*"~~[this]~~ shall not include licensed attorneys representing clients in such matters; or
  - (d) In the case of a home equity conversion mortgage or reverse mortgage, making payments to the borrower;
- (29)~~(33)~~ "Takes a residential mortgage loan application" or "*taking a residential mortgage loan application*" means:
- (a) Recording the borrower's application information in any form for use in a credit decision; or
  - (b) Receiving the borrower's application information in any form for use in a credit decision;
- (30)~~(34)~~ "Transact business in Kentucky" or "transacting business in Kentucky" means to participate in any meaningful way in the mortgage lending process, including the servicing of mortgage loans, with respect to any residential real property located in Kentucky;
- (31)~~(35)~~ "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry; and
- (32)~~(36)~~ "Wholly owned subsidiary" means a subsidiary that is entirely owned or controlled by another person.

➔Section 2. KRS 286.8-034 is amended to read as follows:

- (1) (a) An applicant for a license under this subtitle shall provide the commissioner with *a check*~~[separate checks]~~ payable to the Kentucky State Treasurer for *five thousand dollars (\$5,000)*.~~;~~
  - ~~(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) *The fee required under paragraph (a) of this subsection shall cover the application fee and the licensing fee for all licensed locations, including any changes of address*~~[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 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].~~
- (2) (a) A license issued between January 1 and *September 30*~~[October 31]~~ of the same calendar year shall expire on December 31 of the same calendar year.
  - (b) A license issued between *October*~~[November]~~ 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year.
- (3) A license may be renewed by *submitting the following*:~~[paying]~~
  - (a) 1. ~~An~~~~[the]~~ annual *assessment*~~[renewal license]~~ fee.~~[ which is three hundred fifty dollars (\$350) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky.]~~
  - 2. *Subject to subparagraph 3. of this paragraph, the annual assessment fee required under subparagraph 1. of this paragraph shall:*
    - a. *Be based on the volume of loans originated and the volume of loans serviced for residential real property located in Kentucky during the twelve (12) month period ending on September 30;*
    - b. *Be determined by applying a factor of one hundred twenty-five ten-thousandths percent (0.0125%) to the volume of loans originated and the volume of loans serviced in Kentucky; and*

- c. **Cover:**
  - i. *The renewal fee for the principal office and any branches; and*
  - ii. *Any examination-related costs incurred by the department.*
- 3. *The annual assessment fee shall not be:*
  - a. *Less than one thousand five hundred dollars (\$1,500); or*
  - b. *More than fifteen thousand dollars (\$15,000);*
- (b) *An annual report of condition*~~[submitting]~~ to the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry~~[an annual report of condition]~~, which shall be in such form and contain such information as the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry may require;~~;~~ and ~~[submitting]~~
- (c) ~~[To the commissioner]~~Any other information required by the commissioner.
- (4) (a) *The commissioner shall, by administrative regulation or order, adjust the fees in subsections (1) and (3)(a) of this section every two (2) years.*
- (b) *An adjustment under paragraph (a) of this subsection shall be calculated based on the percent change in the nonseasonally adjusted annual average Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics.*
- (5) The commissioner shall not approve the renewal of a mortgage loan broker's license if the commissioner has not received the information on physical location as required in KRS 286.8-032(8).
- (6)~~(4)~~ (a) The *renewal* application, fees, and any required information shall be received by the commissioner on or before November 30 prior to the December 31 expiration date.
- (b) The commissioner may reinstate ~~a~~~~the~~ license within thirty-one (31) days of the expiration of the license if the licensee pays the *assessment*~~[filing]~~ fee and a reinstatement fee of *five hundred dollars (\$500)*~~[two hundred fifty dollars (\$250)]~~.
- (c) A license shall not be reinstated when the *renewal* application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.

➔Section 3. KRS 286.8-036 is amended to read as follows:

- (1) *As used in this section:*
  - (a) *"Documents":*
    - 1. *Means documents involved in the mortgage lending process; and*
    - 2. *Includes but is 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:*
        - i. *Form W-2 or other earnings or income statements;*
        - ii. *Verifications of rent, income, and employment;*
        - iii. *Bank statements;*
        - iv. *Tax returns; and*
        - v. *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; and*

- (b) *"Employee" shall include a mortgage loan originator engaged as an independent contractor.*
- (2) Each license issued under this subtitle shall state the:
- (a) Address or addresses at which business is to be conducted;~~[-, the]~~
- (b) Name of the licensee;~~[-]~~ and~~[- the]~~
- (c) Date and place of its incorporation, if applicable.
- ~~(3)(2)~~ A license may not be transferred or assigned without the prior written approval of the commissioner.
- ~~(4)(3)~~ No licensee shall transact the business provided for by this subtitle under any other name or maintain an office at any location other than *a licensed location or an alternate work location*~~[that designated in the license].~~
- ~~(5)(4)~~ Every licensed mortgage loan company or mortgage loan broker shall notify the commissioner, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch.
- (6) (a) *A licensee may permit employees to engage in the mortgage lending process at an alternate work location if:*
1. *The licensee has written policies and procedures for supervision of employees working from alternate work locations;*
  2. *Access to the licensee's computer systems and customer information is in accordance with the licensee's comprehensive written information technology security plan;*
  3. *Employees are not permitted to conduct in-person customer activities at the alternate work location except as provided in subsection (2)(b)2. of Section 1 of this Act;*
  4. *The licensee ensures that no physical or electronic documents are maintained at the alternate work location; and*
  5. *No signage or advertising of the licensee or the mortgage loan originator is displayed at any alternate work location.*

➔Section 4. KRS 286.8-295 is amended to read as follows:

- (1) *As used in this section, "employee" shall include a mortgage loan originator engaged as an independent contractor.*
- (2) (a) Every mortgage loan company and mortgage loan broker shall exercise proper supervision and control over the operations, employees, and affairs of its company.
- (b) *A mortgage loan company or mortgage loan broker shall supervise and control all employees acting as a mortgage loan originator on behalf of the mortgage loan company or mortgage loan broker*~~[not directly utilize the services of a mortgage loan originator engaging in any of the activities set forth in KRS 286.8-010(21)(a), unless that mortgage loan originator is under the supervision and control of that company as an employee].~~
- (3) *A licensee that allows employees to engage in the mortgage lending process from an alternate work location shall:*
- (a) *Exercise proper supervision and control over the employees;*
- (b) *Have written policies and procedures in place that ensure a safe, secure system for the mortgage lending process;*
- (c) *Oversee compliance, and require all employees to comply, with the policies and procedures referenced in paragraph (b) of this subsection;*
- (d) *Employ appropriate risk-based monitoring and oversight processes;*
- (e) *Ensure that:*
1. *Customer interactions and communications about consumer accounts are in compliance with federal and state information security requirements, including applicable provisions of:*
    - a. *The Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended; and*
    - b. *The Federal Trade Commission's Safeguards Rule, set forth in 16 C.F.R. Part 314;*

2. *Any employee that engages in the mortgage lending process at an alternate work location accesses the company's secure systems, including a cloud-based system, directly from any out-of-office device via a virtual private network (VPN) or a comparable system that ensures secure connectivity and requires passwords or other forms of authentication to access;*
  3. *Appropriate security updates, patches, or other alterations to the security of all devices used at an alternate work location are installed and maintained;*
  4. *Any employee that engages in the mortgage lending process at an alternate work location agrees to comply with the licensee's processes established under paragraph (d) of this subsection; and*
  5. *The Nationwide Multistate Licensing System and Registry record of a mortgage loan originator that works from an alternate work location designates a properly licensed location as the mortgage loan originator's official work station;*
- (f) *Have the ability to:*
1. *Remotely lock or erase company-related contents of any device; or*
  2. *Otherwise remotely limit all access to the company's secure systems; and*
- (g) *At least annually:*
1. *Certify that all employees engaged in the mortgage lending process at alternate work locations meet the appropriate standards and safeguards to continue engaging in the mortgage lending process from the alternate work locations; and*
  2. *Review each alternate work location and provide proof of the documented review to the department upon request.*

(4) Notwithstanding any provision to the contrary, nothing in this section shall prohibit mortgage loan companies from utilizing the services of a mortgage loan broker and its employees.

➔Section 5. 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:
  - (a) As the commissioner prescribes; ~~and~~ or
  - (b) That are required by federal law.
- (2) (a) ***Except as provided in paragraph (b) of this subsection,*** the records governed ~~under~~ ~~in~~ this subtitle shall be preserved for such time as the commissioner may by ***regulation*** ~~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.
  - (b) 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:
  - (a) 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 commissioner; ***and***
  - (b) ***Shall not be maintained at any alternate work location.***
- (4) Every mortgage loan company and mortgage loan broker shall file financial reports as the commissioner prescribes.
- (5) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the person who filed the document 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 commissioner 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 commissioner upon five (5) business days' written notice.

- (7) (a) 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 commissioner of the name, physical address, electronic mail address, and telephone number of the custodian of records.
- (b) The custodian of records shall preserve all records required under this subtitle and allow the commissioner 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 commissioner upon five (5) business days' written notice.
- (9) The commissioner 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 6. KRS 286.8-170 is amended to read as follows:

- (1) ***As used in this section, "control records" means all records relating to the operation of a branch that are necessary to exercise control and supervision over the branch.***
- (2) (a) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete records of its business transactions, books of accounts, and minutes of proceedings of its directors, principals, or partners.
- (b) Complete records of all business transactions at the principal office shall be maintained at the principal office.
- (c) Each branch ~~office~~ shall:
1. Keep detailed records of all transactions at ~~the~~~~such~~ branch; ~~office~~ and ~~shall~~
  2. Furnish full control records to the principal office.
- (d) 1. ***Any record of a mortgage loan company's or mortgage loan broker's business transactions, book of accounts, or minutes of proceedings of its directors, principals, or partners generated prior to the company's or broker's previous examination may be stored at a third-party secure storage facility.***
2. ***The mortgage loan company or mortgage loan broker, as applicable, shall:***
- a. ***Notify the commissioner, in writing, thirty (30) days prior to engaging with any third-party secure storage facility; and***
  - b. ***Receive approval from the commissioner for use of the third-party secure storage facility.***
- (3)~~(2)~~ No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation~~;~~ or under any title, designation, or value that is not thoroughly descriptive of any assets.
- (4)~~(3)~~ The affairs of every mortgage loan company, mortgage loan broker, and mortgage loan originator, and the records required to be maintained by KRS 286.8-160, ***shall be***~~are~~ subject at any time or from time to time to such periodic, special, or other examinations by the ***commissioner***~~executive director~~ or an examiner of the commissioner within or without this state and with or without notice to the person being examined, as the commissioner deems necessary or appropriate in the public interest. All records of the person being examined shall be subject to the commissioner's inspection.
- (5)~~(4)~~ The examiner shall:
- (a) Make a thorough examination into the condition, workings, and affairs of the person being examined; and
  - (b) Report, ***as he or she may find, to the commissioner*** any:
    1. Violation of law ~~;~~ ~~or any~~
    2. Unauthorized unsafe practices; or ~~any~~



3. Failure to keep and have correct any required books and records ~~[as he or she may find to the commissioner].~~
- (6)(5) ~~[A mortgage loan company or mortgage loan broker shall pay a fee for each such examination of its operations or employees based on fair compensation for time and actual expense.]~~ For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he or she deems it practicable in administering this section, may:
- (a) Cooperate and exchange information with:
    1. Any agency of the state or federal government; ~~[;]~~
    2. Other states; ~~[;]~~
    3. The Nationwide *Multistate* ~~[Mortgage]~~ Licensing System and Registry; ~~[;]~~ or
    4. The federal National Mortgage Association, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation; ~~[;]~~ and ~~[may]~~
  - (b) Accept ~~[such]~~ examinations *from the entities described in paragraph (a) of this subsection*, in whole or in part, in lieu of an examination by the commissioner.
- (7)(6) The commissioner or the commissioner's examiners or designated representative shall have access to all records of a mortgage loan company, mortgage loan broker, and mortgage loan originator which relate to their business, and records kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.
- (8)(7) (a) A mortgage loan originator shall make available and grant access to the commissioner, or an examiner of the commissioner, the records relating to its operations.
- (b) A mortgage loan company or mortgage loan broker shall make available and grant access to all records of its current and former employees and contractors relating to its operations.
- (9)(8) Any person subject to this subtitle shall make or compile reports or prepare other information as directed by the commissioner or an examiner of the commissioner to include:
- (a) Accounting compilations;
  - (b) Information lists and data concerning loan transactions in a format prescribed by the commissioner or an examiner of the commissioner; and
  - (c) Such other information deemed necessary to carry out the purposes of this section.
- (10)(9) No mortgage loan company, mortgage loan broker, or mortgage loan originator shall impede the commissioner or an examiner of the commissioner from interviewing its officers, principals, members, employees, independent contractors, agents, or customers.
- (11)(10) (a) In making any examination or investigation authorized by this subtitle, the commissioner may control access to any documents and records of the licensee or person under examination or investigation.
- (b) The commissioner may take possession of the documents and records, or place a person in exclusive charge of the documents and records in the place where they are usually kept.
- (c) During the period of control *under this subsection*, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner.
- (d) Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.
- (12)(11) ~~No~~ ~~[it shall be unlawful for any]~~ person subject to investigation or examination under this subtitle *shall* ~~[to]~~ knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information.
- (13)(12) In order to carry out the purposes of this subtitle, the commissioner may:

- (a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this subtitle; and
- (c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the persons subject to this subtitle.

~~(14)~~~~(13)~~ The authority of this section shall remain in effect~~;~~ whether a person acts, or claims to act, under any licensing or registration law of this subtitle, or *acts, or* claims to act, without such authority.

➔Section 7. KRS 286.8-100 is amended to read as follows:

- (1) No licensee shall establish or maintain a branch transacting business in Kentucky, either directly or indirectly, without:
  - (a) Filing the application as described in KRS 286.8-032(5); and
  - (b) Receiving prior written approval of the commissioner.
- (2) Each application for approval of the establishment and maintenance of a branch shall state:
  - (a) The physical address of the proposed location;~~;~~
  - (b) The functions to be performed;~~;~~ and
  - (c) Other information the commissioner may require if different from that contained in the original application for a license or registration.
- (3) Each application under this section shall be sworn to *by the applicant* ~~and accompanied by the appropriate fee as set out in KRS 286.8-034(1)(b)).~~
- (4) Upon the receipt ~~by the commissioner~~ of an application ~~and the required fee~~, if *the commissioner* ~~he~~ finds that the applicant is otherwise in compliance with the provisions of this subtitle, *the commissioner* ~~he~~ shall approve the application.
- (5) The commissioner may deem an application abandoned and subject to KRS 286.8-090 when:
  - (a) The application is received incomplete; and
  - (b) The applicant fails to:
    - 1. Provide any required information ~~or fee~~ under this subtitle; or ~~fails to~~
    - 2. Respond to a request by the commissioner for further information.

➔Section 8. KRS 286.8-140 is amended to read as follows:

- (1) The commissioner shall exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky.
- (2) In addition to the other duties imposed upon him *or her* by law, the powers and duties of the commissioner *shall be*~~are~~:
  - (a) 1.~~(1)~~ To *promulgate* ~~prescribe~~ such ~~rules,~~ *administrative* 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.
  - 2. The commissioner may from time to time make, amend, and rescind such *administrative regulations*~~rules~~, forms, and orders, including *regulations*~~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.
  - 3. For the purpose of *administrative regulations*~~rules~~ and forms, the commissioner may classify loans, persons, and matters within his *or her* jurisdiction~~;~~ and prescribe different requirements for different classes.

4. **An administrative regulation** ~~[No rule]~~, form, or order may *not* be made, amended, or rescinded unless the commissioner 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.
5. In **promulgating administrative regulations** ~~[prescribing rules]~~ and forms, the commissioner 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;
  - ~~(b)(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;
  - ~~(c)(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
  - (d) ~~1.(4)~~ At the commissioner's discretion, to require filings and fees required under this subtitle to be electronically filed with:
    - a. The State Regulatory Registry, LLC, or its successor organization; ~~;~~
    - b. **The State Regulatory Registry, LLC's** ~~its~~ parent, affiliate, or operating subsidiary; ~~;~~ ~~or~~
    - c. Other agencies or authorities that are part of the Nationwide **Multistate** ~~[mortgage]~~ Licensing System **and Registry**; ~~;~~ or
    - d. Other agencies or authorities consistent with the intent of KRS 286.8-285.
  2. The commissioner 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 9. KRS 286.8-150 is amended to read as follows:

- (1) (a) Except as otherwise provided by law, applications for registration or renewals **and** ~~;~~ all papers, documents, reports, and other written instruments filed with the commissioner under this subtitle, or obtained pursuant to an examination by the **department, shall be** ~~[Department of Financial Institutions are]~~ open to public inspection, except that the commissioner pursuant to the provisions of KRS Chapter 61 may classify as confidential or withhold from public inspection, for such time as he or she considers necessary, any information which, in his or her judgment, the public welfare or the welfare of any licensee or registrant or its customers requires to be so withheld.
  - (b) All investigations and information contained therein shall not be public until such time as the commissioner makes all or part of the investigation public or the investigation is closed.
- (2) The commissioner may classify as confidential certain records and information obtained by the **department** ~~[Department of Financial Institutions]~~ when such matters are obtained from the Nationwide **Multistate** ~~[Mortgage]~~ Licensing System and Registry or from a governmental agency.
- (3) The commissioner may classify as confidential and prohibit the disclosure of any request for documents or records submitted pursuant to KRS 286.8-180, for such time as deemed necessary if, in the commissioner's judgment, the disclosure of said request for documents or records may:
  - (a) Impede or interfere with an ongoing investigation conducted pursuant to KRS 286.8-140; or ~~;~~ ~~may~~
  - (b) Cause the destruction or secretion of documents by the targeted party.
- (4) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, any information, documents, or material provided to or obtained from the Nationwide **Multistate** ~~[Mortgage]~~ Licensing System and Registry shall be subject to the confidentiality requirements set forth in Section 1512 of the S.A.F.E. Mortgage Licensing Act, **12 U.S.C. sec. 5111** ~~[Pub. L. No. 110-289]~~, and amendments thereto.

➔Section 10. KRS 286.8-220 is amended to read as follows:

- (1) **No person** ~~[It]~~ shall ~~be unlawful for any person to~~ make or cause to be made, in any document filed with the commissioner, a governmental agency, the Nationwide **Multistate** ~~[Mortgage]~~ Licensing System and Registry, or in any proceeding under this subtitle, any statement that 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) **No person** ~~{it}~~ shall ~~be unlawful for any person~~, 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 loans, 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 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;
  - (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;
  - (g) ~~{To}~~ Obtain property by fraud or misrepresentation;
  - (h) ~~{To}~~ Fail to make disclosures as required by this subtitle or any other applicable state or federal law, including regulations thereunder; or
  - (i) ~~{To}~~ Fail to comply with state or federal laws, including the rules and regulations thereunder, that are applicable to transacting business in Kentucky.
- (3) Unless exempted by KRS 286.8-020(1), **no person** ~~{it}~~ shall ~~be unlawful for any person to~~ transact business in Kentucky unless it complies with the provisions of this subtitle.
- (4) **No person** ~~{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 11. KRS 286.8-255 is amended to read as follows:
- (1) (a) No natural person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan originator unless such mortgage loan originator:
    1. Is registered with the department;~~{t}~~
    2. Complies with all applicable requirements of this subtitle;~~{t}~~ and
    3. Maintains a valid unique identifier issued by the Nationwide **Multistate**~~{Mortgage}~~ Licensing System and Registry.
  - (b) The department shall maintain a database of all mortgage loan originators originating mortgage loans on residential real property in Kentucky.
- (2) The application for registration shall:
- (a) Be on a form prescribed by the commissioner;
  - (b) Be accompanied by a registration fee in the amount of fifty dollars (\$50), which shall be used solely by the department to establish and maintain a database of all mortgage loan originators and any excess funds shall be retained by the department and shall not lapse to the general fund; and

- (c) Contain such information as the commissioner deems necessary to carry out the purposes of this subtitle.
- (3) (a) Applications for initial registrations of mortgage loan originators shall be accompanied by satisfactory evidence that the applicant has successfully completed twenty (20) hours of prelicensing education courses related directly to the mortgage lending process, as approved and designated by the commissioner.
- (b) For the purposes of paragraph (a) of this subsection:~~;~~
1. The prelicensing education courses approved and designated by the commissioner shall:
    - a. Meet the minimum requirements set forth in Section 1505(c) of the S.A.F.E. Mortgage Licensing Act, *12 U.S.C. sec. 5104(c)*~~[Pub. L. No. 110-289]~~, and amendments thereto;~~;~~ and ~~shall~~
    - b. Be reviewed~~;~~ and approved by the Nationwide **Multistate**~~[Mortgage]~~ Licensing System and Registry; ~~and~~~~;~~
  2. ~~[(c) For the purposes of paragraph (a) of this subsection,]~~ The commissioner may accept as credit towards the completion of the prelicensing education requirements in this state, the completion of prelicensing education requirements in any other state so long as the education has met the requirements set forth in ~~paragraphs (a) and (b) of]~~ this subsection.
- (4) (a) Applications for renewals of registration by registered mortgage loan originators shall 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).
- (b) The renewal fee shall be used solely by the department to establish and maintain a database of all mortgage loan originators and any excess funds shall be retained by the department and shall not lapse to the general fund.
- (5) (a) A registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year.
- (b) A registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year.
- (c) Any registration that has expired may be reinstated by the commissioner upon payment of the annual **renewal**~~[registration]~~ fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the registration.
- (6) All mortgage loan originators subject to the registration requirements of this section shall also be subject to and comply with all applicable provisions of this subtitle.
- (7) (a) The commissioner shall require, *as part of an application or renewal application filed under this subtitle, including but not limited to applications or renewals for mortgage loan originators*, the submission of:
1. Background records checks, including but not limited to checks for state, federal, and international criminal histories, civil or administrative records, and any other information as deemed necessary to comply with the minimum requirements set forth in Section 1505 of the S.A.F.E. Mortgage Licensing Act, *12 U.S.C. sec. 5104*~~[Pub. L. No. 110-289]~~, and amendments thereto; ~~and~~~~;~~ ~~as well as the submission of]~~
  2. An independent credit report obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a~~;~~ ~~as part of an application or renewal application filed under this subtitle, including but not limited to applications or renewals for mortgage loan originators].~~
- (b) The cost of the background ~~and~~ records checks~~;~~ and credit report shall be borne by the applicant.
- (8) No mortgage loan originator shall be granted or shall be entitled to maintain a registration unless he or she satisfies the following minimum standards for registration:

- (a) The applicant has never had a loan originator's license or registration revoked in any governmental jurisdiction, except revocations that have been formally vacated or set aside shall not be deemed a revocation for the purposes of this section;
  - (b) The applicant has not been convicted of, pled guilty to, or pled nolo contendere to a felony in any domestic, foreign, or military court:
    - 1. During the seven (7) year period preceding the date of the application for registration or renewal of registration; or
    - 2. At any time preceding such date of application for registration or renewal of registration, if such felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;
  - (c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle;
  - (d) The applicant has completed the preclicensing education requirement set forth in subsection (3) of this section;
  - (e) The applicant has passed a qualified written test which satisfies the minimum requirements set forth in Section 1505(d) of the S.A.F.E. Mortgage Licensing Act, *12 U.S.C. sec. 5104(d)*~~[Pub. L. No. 110-289]~~, and amendments thereto; and
  - (f) The applicant holds or is covered by a surety bond which satisfies the minimum requirements set forth in KRS 286.8-060.
- (9) (a) A mortgage loan processor shall not be required to maintain a registration, but the processor's supervising mortgage loan company or mortgage loan broker shall be required to:
- 1. Provide the mortgage loan processor with the continuing education required under KRS 286.8-260; ~~and [as well as]~~
  - 2. **Prior to hiring an applicant as a processor**, perform an employee background check in accordance with uniform standards established by the commissioner. ~~[prior to hiring an applicant as a processor, and]~~
- (b) **A mortgage loan company or mortgage loan broker shall** provide proof of compliance with this ~~subsection~~~~section~~ to the commissioner upon demand, demonstrating that:
- 1. ~~(a)~~ The applicant has not been convicted of, pled guilty to, or pled nolo contendere to a felony in any domestic, foreign, or military court:
    - ~~a. [1.]~~ During the seven (7) year period preceding the date of the application; or
    - ~~b. [2.]~~ At any time preceding the date of application, if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering; and
  - 2. ~~(b)~~ The applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the loan processor will operate honestly, fairly, lawfully, and efficiently within the purposes of this subtitle.
- (10) No mortgage loan originator shall be granted a **registration** renewal~~[of registration]~~ unless he or she satisfies the following minimum standards for renewal~~[of registration]~~:
- (a) The applicant has met and continues to meet the minimum standards set forth in subsection (8) of this section; and
  - (b) The applicant has satisfied the annual continuing education requirements set forth in KRS 286.8-260.
- (11) (a) The registration of any mortgage loan originator that fails to comply with the minimum standards for registration renewal set forth in this section shall expire and shall promptly be deemed surrendered to the commissioner without demand.
- (b) The commissioner may adopt procedures and requirements for the reinstatement of expired registrations consistent with the standards established by the Nationwide **Multistate**~~[Mortgage]~~ Licensing System and Registry.

- (12) Mortgage loan originators engaging in any of the activities set forth in KRS 286.8-010(18)(a)(21)(a) shall provide loan origination services to not more than one (1) mortgage loan company or mortgage loan broker at a time.

➔Section 12. KRS 286.8-260 is amended to read as follows:

- (1) (a) Any person required to be registered under this subtitle shall complete at least eight (8) hours of continuing professional education on an annual basis that is approved and designated by the commissioner.
- (b) A minimum of one (1) hour of continuing professional education each year shall be instruction on the requirements of this subtitle, ~~or~~ KRS 360.100, or a combination of both.
- (2) For the purposes of subsection (1) of this section:~~;~~
- (a) The continuing professional education courses approved and designated by the commissioner shall:
1. Meet the minimum requirements set forth in Section 1505(b) of the S.A.F.E. Mortgage Licensing Act, *12 U.S.C. sec. 5104(b)* ~~[Pub. L. No. 110-289]~~, and amendments thereto; ~~and~~ ~~the education courses approved and designated by the commissioner shall also~~
  2. *Unless the Nationwide Multistate Licensing System and Registry provides otherwise*, be reviewed and approved by the Nationwide *Multistate* ~~[Mortgage]~~ Licensing System and Registry; ~~and~~ ~~unless the Nationwide Mortgage Licensing System and Registry provides otherwise.~~
- (b) ~~{(3) For the purposes of subsection (1) of this section,}~~ The commissioner may accept as credit towards the completion of the continuing professional education requirements in this state, the completion of continuing professional education requirements in any other state so long as the education has met the requirements set forth in *this subsection and subsection* ~~{subsections}~~ (1) ~~and (2)~~ of this section.
- (3) (a) ~~{(4)}~~ For good cause shown, the commissioner may grant an extension during which the continuing *professional education requirements* ~~{requirement}~~ of this section may be completed, but the extension may not exceed thirty (30) days.
- (b) What constitutes good cause for the extension of time rests within the discretion of the commissioner.
- (4) ~~{(5)}~~ The registration of any mortgage loan originator that fails 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 (3) ~~{(4)}~~ of this section shall:
- (a) Expire; ~~and~~ ~~shall~~
- (b) Promptly be deemed surrendered to the commissioner without demand.

➔Section 13. KRS 286.8-285 is amended to read as follows:

- (1) (a) In addition to other duties imposed upon the commissioner in this subtitle, the commissioner shall be authorized to:
1. Participate in the ~~{establishment and implementation of the}~~ Nationwide *Multistate* ~~[Mortgage]~~ Licensing System and Registry; ~~and~~ ~~to~~
  2. Implement and comply with the minimum requirements set forth in the S.A.F.E. Mortgage Licensing Act, *12 U.S.C. sec. 5101 et seq., as amended* ~~[Pub. L. No. 110-289, and amendments thereto]~~.
- (b) For such purpose, the commissioner is authorized to waive or modify, in whole or in part, by *regulation* ~~{rule}~~ or by order, any or all of the requirements of this subtitle and to establish new requirements as reasonably necessary to carry out the purpose of this section.
- (c) The commissioner shall have authority to establish relationships or contracts with other governmental agencies, the Nationwide *Multistate* ~~[Mortgage]~~ Licensing System and Registry, or entities affiliated with the system that are necessary to carry out the purpose of this section.
- ~~{(d) The commissioner may establish interim procedures to promote and establish an orderly and efficient transition for the registration, review, and acceptance of new applications. The commissioner may also~~

~~establish interim procedures and expedited review and registration procedures for previously registered individuals.~~

- ~~(d)(e)~~ The commissioner may use the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry as an agent for receiving, requesting, and distributing information to and from any source so directed by the commissioner.
- (2) The commissioner shall establish a process whereby licensees may challenge information entered into the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry by the commissioner.
  - (3) The commissioner shall annually request audited financial reports, including inquiring as to the budget and fees collected, both proposed and actual, from the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry.
  - (4) The commissioner shall annually request any nonconfidential protocols or reports for the security and safeguarding of personal information maintained by the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry, including the following:
    - (a) Inquiring as to whether the system has implemented and complied with the data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801;
    - (b) Inquiring as to the results of any nonconfidential periodic data protection audits that the system may conduct; and
    - (c) Inquiring as to whether any security breaches have occurred resulting in the substantial likelihood that personal information may be misused or stolen.
  - (5) The commissioner shall annually request from the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry the following statistical information, if available, relating to the examinations taken by applicants seeking registration as a loan originator in Kentucky during the preceding calendar year:
    - (a) The total number of tested individuals, along with any relevant demographic information available such as race, ethnicity, or gender;
    - (b) The total number of individuals who received a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender;
    - (c) The total number of individuals who did not receive a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender; and
    - (d) All mean, average, or scaled scoring data.
  - (6) When requested by the General Assembly, the commissioner shall review and report to the General Assembly the content of any information received from the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry pursuant to subsection (3), (4), or (5) of this section.
  - (7) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, the commissioner shall regularly report violations of this subtitle, as well as enforcement actions and other relevant information, to the Nationwide *Multistate*~~[Mortgage]~~ Licensing System and Registry.

➔Section 14. KRS 286.8-020 is amended to read as follows:

- (1) The following mortgage loan companies and mortgage loan brokers shall be subject to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of this section, but shall be exempt from all other provisions of this subtitle:
  - (a) Any person duly licensed, chartered, and 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, savings and loan association holding company, service corporation subsidiary of a savings and loan association, 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 if the subsidiary is subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency;
  - (b) Any natural person who makes a mortgage loan secured by a dwelling that served as the natural person's residence, unless the natural person is compensated in connection with that transaction by a



- mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
- (c) Any natural person who makes a mortgage loan to an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
  - (d) Any person other than a natural person, including any affiliate of that person, that makes in the aggregate no more than four (4) mortgage loans within a calendar year with its own funds and secured by residential real property owned by the person making the mortgage loan, provided that the mortgage loan is made without the intent to resell the mortgage loan, and provided that the person does not hold itself out to the public as being primarily in the mortgage loan business;
  - (e) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
  - (f) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
  - (g) Any mortgage loan company or mortgage loan broker making or brokering a mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;
  - (h) 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 of such a 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
  - (i) 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.
- (2) The following shall be exempt from the licensing provisions of this subtitle and the examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on grounds satisfactory to the commissioner that an examination is necessary, but shall otherwise be subject to all other provisions of this subtitle:
- (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 States Department of Housing and Urban Development to perform business in this Commonwealth.
- (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (1)(i) or (2)(a) or (b) of this section shall file with the commissioner a written application for a claim of exemption. The commissioner shall approve an application for 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 commissioner 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.
- (4) Any mortgage loan company, mortgage loan broker, or branch thereof 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 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 commissioner, 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), (g), or (h) of this section shall not be required to file with the commissioner a claim of exemption.
- (7) (a) Any natural person making a loan under subsection (10) 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 Department 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 Department 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.
- (8) Any mortgage loan company, mortgage loan broker, or branch thereof 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 from December 1 of the previous calendar year to November 30 of the current calendar year to the commissioner by December 31 of each year on a form prescribed by the commissioner.
- (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 commissioner; 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 commissioner.
- (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who makes 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 commissioner 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(7)(~~6~~), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
- (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
- (e) Registration and regulatory requirements of KRS 286.8-255.
- (11) No person shall hold both a claim of exemption and a license granted under this subtitle.
- (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the commissioner or an examiner of the commissioner the records in its possession or control that are subject to the provisions of this subtitle.
- (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the commissioner or an examiner of the commissioner from interviewing any person regarding any potential violations of this subtitle.
- (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of KRS 286.8-255 shall complete and timely submit to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, along with any other information which may be required by the commissioner.

➔Section 15. KRS 355.9-408 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:
  - (a) Would impair the creation, attachment, or perfection of a security interest; or
  - (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (2) Subsection (1) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under KRS 355.9-610 or an acceptance of collateral under KRS 355.9-620.
- (3) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
  - (a) Would impair the creation, attachment, or perfection of a security interest; or
  - (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) of this section would be effective under law other than this article but is ineffective under subsection (1) or (3) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:
  - (a) Is not enforceable against the person obligated on the promissory note or the account debtor;
  - (b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
  - (c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
  - (d) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
  - (e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
  - (f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.
- (5) This section prevails over any inconsistent provisions of the following statutes and any administrative regulations based on those statutes: KRS 56.230(2), 138.320(3), 138.665(4), 138.720(5), 139.250, 154A.400(3), 190.047(1), 190.070(2)(c), 217B.535(2), 228.070(2), 230.300(11), 234.330(10), 243.630(2), 260.815, 286.4-460(2), 292.320(2)(b), 286.8-036(3)~~(2)~~, 304.3-410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430(27), and 286.9-070(2).
- (6) Subsection (3) of this section does not apply to the following statutes and to administrative regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304.

**Signed by Governor April 8, 2022.**

