

808 KAR 1:170. Licensing and registration.

RELATES TO: KRS Chapter 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034, 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-255, 286.8-260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071, 286.9-073, 286.9-080

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-425, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-107

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form and materials required to apply for a license under KRS Chapter 286.9. This administrative regulation establishes licensing and registration requirements for consumer loan companies and procedures for using the nationwide mortgage licensing system.

Section 1. Definitions. (1) "Audited financial statement" means a financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles.

(2) "Surety bond" means a bond furnished by a surety company authorized to conduct business in Kentucky.

Section 2. Consumer Loan Company Licensure. A person applying for licensure as a consumer loan company shall submit:

(1) A completed NMLS Company Form available online at <http://mortgage.nationwidelicensingsystem.org>;

(2) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicensingsystem.org>;

(3) A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in which the person is licensed or registered if the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application;

(4) The nonrefundable application investigation fee established in KRS 286.4-440(1); and

(5) The annual license fee established in KRS 286.4-440(1).

Section 3. Check Cashing and Deferred Deposit Service Business Licensure. (1) Initial Application. A person applying for an initial check cashing license shall submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the direct owners and executive officers section of the NMLS Company Form;

(c) The nonrefundable investigation fee established in KRS 286.9-060(1);

(d) Form COMB-1, State License Confirmation Form for Check Cashing License or Deferred

Deposit Service Business License, incorporated by reference in 808 KAR 9:050, if the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state;

(e) An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated as of the previous year end. If the applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(f) Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(g) One (1) of the following, which shall be deposited with and made payable to the commissioner:

1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

2. An Electronic Surety Bond, available online at <http://mortgage.nationwidelicensingsystem.org>, in an amount required by KRS 286.9-040(1)(b). The name of the principal insured on the bond shall match exactly the full legal name of the applicant; or

3. Form COMB-3, Escrow Agreement for Check Cashing License or Deferred Deposit Service Business License, incorporated by reference in 808 KAR 9:050, accompanied by:

a. Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c); or

b. A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d).

(2) Renewal Application. A licensee applying for renewal of a check cashing license or deferred deposit service business license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before December 31 of each year:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicensingsystem.org>; and

(b) The nonrefundable license fee established in KRS 286.9-080(1).

(3) Reinstatement Application. A licensee applying for reinstatement of a check cashing license or deferred deposit service business license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to January 31 of the year that the renewal application was due:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicensingsystem.org>;

(b) The nonrefundable license fee established in KRS 286.9-080(1); and

(c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit:

(a) A completed NMLS Company Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the direct owners and executive officers section of the NMLS Company Form;

(c) An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated the previous year end to the date of

submission of the NMLS Company Form. If applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(d) An Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> in an amount not less than the amount required by KRS 286.8-060(1). The name of the principal insured on the bond shall match exactly the full legal name of applicant.

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;
2. If a limited liability company, the Articles of Organization and Operating Agreement; or
3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form; and

(j) The fees set forth in KRS 286.8-034(1).

(2) Renewal Application.

(a) A person applying for renewal of a mortgage loan company or mortgage loan broker license prior to December 1 shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>; and

2. The fee set forth in KRS 286.8-034(3).

(b) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-034(4).

(3) Change of address, name, control, or agent for service.

(a) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

1. At least ten (10) days prior to the change of address or name; and
2. Five (5) days prior to the change of agent for service of process.

(b) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with the information necessary for the commissioner to determine whether the requirements of KRS Chapter 286.8 will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days.

(c) A licensee changing its address, name, control, or agent for service of process shall update this information in Nationwide Mortgage Licensing System (NMLS) within the same time periods set forth in this section.

Section 5. Registration of a Mortgage Loan Company Branch. (1) A mortgage loan company

branch shall not be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed NMLS Branch Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A copy of the lease or deed for the branch;

(c) A completed Form ML-7, Branch Authorization Form;

(d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration prior to December 1 shall submit all materials required by Section 4(2)(a) of this administrative regulation.

(4) A person applying for renewal of a branch registration through reinstatement shall submit all materials required by Section 4(2)(a) of this administrative regulation and the reinstatement fee required by KRS 286.8-034(4).

Section 6. Registration of a Mortgage Loan Originator. (1) Initial registration. A person applying for registration as a mortgage loan originator pursuant to KRS 286.8-255(2) shall submit:

(a) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(2) Renewal registration.

(a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS 286.8-255(4) shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;

2. A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

3. Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

4. The fee set forth in KRS 286.8-255(4).

(b) A person applying for renewal of a mortgage loan originator registration through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-255(5).

(3) The cost of any Federal Bureau of Investigation background records check or credit report required by this section shall be borne by the applicant.

Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or renewal through reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her own bond, the applicant shall submit an Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> in an amount determined by annual loan origi-

nation as follows:

- (1) If the annual loan volume of the applicant is less than \$10,000,000, the surety bond shall be in an amount not less than \$15,000; or
- (2) If the annual loan volume of the applicant is \$10,000,000 or more, the surety bond shall be in an amount not less than \$20,000.

Section 8. Factors Used to Determine Approval or Disapproval of an Application. (1) A mortgage loan originator applicant seeking registration, renewal, or renewal through reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle.

(2) An applicant shall authorize the commissioner to obtain a credit report containing a credit score to aid in making this determination.

(3) The applicant shall have met the requirement of financial responsibility if he or she possessed a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report, the applicant's criminal history, and any administrative or civil actions taken against the applicant.

Section 9. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System Operated by the State Regulatory Registry, LLC. (1) A person applying for licensure, registration, renewal, or renewal through reinstatement pursuant to Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at <http://www.stateregulatoryregistry.org/NMLS>, as part of the nationwide mortgage licensing system:

(a) All forms, updates, attestations, and requests required by Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation, as applicable;

(b) Fingerprints and any other information or authorizations necessary to obtain the background records checks and credit reports referenced in Section 6 of this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions referenced in subsection (1) of this section shall be borne by the applicant.

Section 10. Abandoned Applications. If an applicant fails to provide or respond to a request

for additional information within ninety (90) days of submission to the department, the application shall be abandoned. An applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit all required information.

Section 11. Inactive Status for Members of the Armed Forces.

(1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.8.

(4) The fee set forth in KRS 286.8-255(4) shall not accrue against a person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CL-4, "State License Confirmation Form", updated December, 2019;

(b) Form ML-6, "Disclosure of Location at a Residence Form", updated December, 2019;

(c) Form ML-7, "Branch Authorization Form", updated December, 2019; and

(d) Form ML-8, "Request for Inactive Status Due to Military Service", updated December, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>. (45 Ky.R. 2261, 2906; eff. 5-3-2019; 46 Ky.R. 699, 1126; eff. 11-1-2019; TAm eff. 12-3-2019.)