

# ENROLLMENT(S)

(5)



AN ACT  
D.C. ACT 11-309

*Codification  
District of  
Columbia  
Code  
1997 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 16, 1996

To provide for the licensing and regulation of mortgage lenders and mortgage brokers by the Superintendent of the District of Columbia Office of Banking and Financial Institutions by requiring a bond, prohibiting certain practices, identifying violations, and imposing certain penalties, requiring examinations, investigations, and other regulation of mortgage lenders and mortgage brokers, imposing fees, and to amend the Telecommunications Competition Act of 1996 to allow the Public Service Commission to regulate some of the terms and conditions of services provided by all local exchange carriers and to clarify the authority of the Public Service Commission to proceed in formal cases pending on the effective date of this act.

**New  
Chapter 10,  
Title 26**

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mortgage Lender and Broker Act of 1996".

Sec. 2. Definitions.

For the purposes of this act, the term:

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(1) "Borrower" means a person who submits an application for a loan secured by a first or subordinate mortgage or deed of trust on a single to 4-family home to be occupied by the borrower as the borrower's primary residence.

(2) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of the loan being extended to the borrower.

(3) "District" means the District of Columbia.

(4) "Federally approved seller-servicers" means a mortgage lender that has been approved as a seller-servicer by:

(A) The Federal Home Loan Mortgage Corporation;

(B) The Federal National Mortgage Association; or

(C) The Government National Mortgage Association.

(5) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan

that:

(A) Results in or is secured by a first or subordinate mortgage or deed of trust on a single to 4-family home to be occupied by the borrower; and

(B) Is offered or extended to the borrower.

(6) "Interest in real property" includes:

(A) A confessed judgment note or consent judgment required or obtained by any person acting as a mortgage lender or mortgage broker for the purpose of acquiring a lien on residential real property;

(B) A sale and leaseback required or obtained by any person acting as a mortgage lender or mortgage broker for the purpose of creating a lien on residential real property;

(C) A mortgage, deed of trust, or lien other than a judgment lien, on residential real property; and

(D) Any other security interest that has the effect of creating a lien on residential real property in the District of Columbia.

(7) "License" means a license issued by the Superintendent under this act to authorize a person to engage in business as a mortgage lender or mortgage broker.

(8) "Licensee" means a person who is licensed as a mortgage lender or mortgage broker under this act.

(9) "Loan application" means any oral or written request for an extension of credit that is made in accordance with procedures established by a mortgage lender or mortgage broker for the purpose of inducing the lender to seek to procure or make a mortgage loan. This term does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.

(10) "Mortgage broker" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly accepts or offers to accept an application for a mortgage loan, solicits or offers to solicit a mortgage loan on behalf of a borrower, or negotiates or offers to negotiate the terms and conditions of a mortgage loan on behalf of a lender.

(11) "Mortgage lender" means:

(A) Any person who:

(i) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists any person in procuring a mortgage loan;

(ii) Makes a mortgage loan to any person; or

(iii) Engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

(B) A mortgage lender does not include:

(i) A financial institution that accepts deposits and is regulated

under title 26 of the District of Columbia Code;

- (ii) The Federal Home Loan Mortgage Corporation;
- (iii) The Federal National Mortgage Association;
- (iv) The Government National Mortgage Association; or
- (v) Any person engaged exclusively in the acquisition of all or

any portion of a mortgage loan under any federal, state, or local governmental program of mortgage loan purchases.

(12) "Mortgage loan" means any loan or other extension of credit that is secured, in whole or in part, by any interest in residential real property in the District of Columbia.

(13) "Non-profit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers. Nothing in this act shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation.

(14) "Person" means an individual, firm, corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity, or group of individuals however organized.

(15) "Principal" means any person who, directly or indirectly, owns or controls 10% or more of the outstanding stock of a stock corporation or 10% or greater interest in a non-stock corporation or a limited liability company.

(16) "Residential real property" means any owner-occupied real property located in the District of Columbia, which property has a dwelling on it designed principally as a residence with accommodations for not more than 4 families. This term does not include any real property held primarily for rental, investment, or the generation of income through any commercial or industrial enterprise.

(17) "Superintendent" means the Superintendent of the District of Columbia Office of Banking and Financial Institutions.

(18) "Washington, D.C. metropolitan region" means the District of Columbia, the counties of Montgomery and Prince Georges in the State of Maryland, the counties of Arlington and Fairfax, and the cities of Alexandria and Falls Church in the Commonwealth of Virginia.

Sec. 3. Exemptions.

The provisions of this act shall not apply to:

(1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of the United States, any state or territory of the United States, or the District, any other financial institution incorporated or chartered under the laws of the District or of the United States that accepts deposits and is regulated under title 26 of the District of Columbia Code, and subsidiaries and affiliates of such entities in

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which the lender, subsidiary, or affiliate is subject to the general supervision or regulation of, or subject to audit or examination by, a regulatory body or agency of the United States, any state or territory of the United States, or the District;

- (2) Any insurance company authorized to do business in the District;
- (3) Any corporate instrumentality of the United States government

including:

- (A) The Federal Home Loan Mortgage Corporation;
- (B) The Federal National Mortgage Association; and
- (C) The Government National Mortgage Association;
- (4) Any person who makes or brokers 3 or fewer mortgage loans per calendar

year;

(5) Any person who takes back a deferred purchase money mortgage in connection with the sale of:

(A) Residential real property owned by, and titled in the name of, that person; or

(B) A new residential dwelling that the person built.

(6) A person making a mortgage loan to a borrower who is the person's spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or grandchild's spouse;

(7) Non-profit corporations making mortgage loans to promote home ownership or improvements for very low, lower, and moderate income households as defined in Chapter 25 of Title 14 of the District of Columbia Municipal Regulations;

(8) Agencies of the federal government, the District, or any state or municipal government, or any quasi-governmental agency making mortgage loans under the specific authority of the laws or regulations of any state, the District, or the United States, including, without limitation, the Housing Finance Agency of the District of Columbia with respect to its activities in offering, accepting, completing, and processing mortgage loan applications under its programs;

(9) Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;

(10) Persons licensed by the District of Columbia as attorneys, real estate brokers, or real estate salespersons, not actively and principally engaged in negotiating, placing, or finding mortgage loans, when rendering services as an attorney, real estate broker, or real estate salesperson; however, a real estate broker or a real estate salesperson who receives any fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage loan for others shall not be exempt from the provisions of this act; and

(11) Persons acting in a fiduciary capacity conferred by authority of any court.

Sec. 4. License requirements.

(a) No person shall engage in business as a mortgage lender or mortgage broker, or both, or hold himself out to the public to be a mortgage lender or mortgage broker for 60 days after the effective date of this act, unless such person has first obtained a license under this act.

(b) To qualify for a license, an applicant shall satisfy the Superintendent that the applicant, including its members, officers, directors, and principals is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

(1) Engage in business as a mortgage lender or mortgage broker;

(2) Warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and

(3) In the case of an applicant for a license to act as a mortgage lender, capitalize the business by having at least \$200,000 of funds available, and in the case of an applicant for a license to act as a mortgage broker, capitalize the business by having at least \$10,000 of funds available.

(c) The Superintendent may deny an application for a license to any person who has committed any act prior to the granting of the license that would be a ground for suspension or revocation of a license under this act.

(d) To apply for a license an applicant shall:

(1) Complete, sign, and submit to the Superintendent an application made under oath on the form that the Superintendent requires; and

(2) Comply with all conditions and provisions of the application for licensure.

(e) The application shall include:

(1) If the applicant is an individual, the applicant's name, business address, and telephone number, and residential address and telephone number;

(2) If the applicant is a partnership, limited liability company, or other non-corporate business association, the business name, business address, and telephone number, and the residential address and telephone number of each:

(A) General partner, if the applicant is a limited partnership;

(B) General partner who holds an interest in the partnership of more than 10%, if the applicant is a general partnership; or

(C) Member, if the applicant is a limited liability company or a non-corporate business association;

(3) If the applicant is a corporation:

(A) The name, address, and telephone number of the corporate entity;

and

(B) The name, business telephone number, and residential address and telephone number of the president, senior vice presidents, secretary and treasurer, each director and each stockholder owning or controlling 10% or more of any class of stock in the corporation;

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(4) The name under which the mortgage lender or mortgage broker business is to be conducted;

(5) The name and address of the applicant's registered agent, if any;

(6) The address of the location of the business to be licensed;

(7) Whether the applicant seeks a license to act as a mortgage lender, mortgage broker, or both; and

(8) Such other information concerning the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, and principals as the Superintendent may require.

(f) With each application, the applicant shall pay to the Superintendent:

(1) A non-refundable investigation fee of \$100;

(2) A non-refundable application fee of \$500; and

(3) A license fee of \$500.

(g) The Superintendent may, from time to time, increase or decrease the fees set forth in this section. The fees shall be fixed at such rates, and computed on such bases and in such manner as may, in the judgement of the Superintendent, be necessary to defray the approximate costs of carrying out the regulatory functions set forth in this act. These fees shall not be abated by surrender, suspension, or revocation of a license.

(h) For each license for which an applicant applies, the applicant shall:

(1) Submit a separate application;

(2) Pay a separate license fee; and

(3) File a separate surety bond or other financial guaranty under subsection (i) of this section.

(i) An applicant for an original license or for the renewal of a license shall file a surety bond with each original application and any renewal application for the license.

(1) The surety bond shall:

(A) Run to the Superintendent for the benefit of any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage lenders or mortgage brokers;

(B) Be issued by a surety company authorized to do business in the District;

(C) Be conditioned upon the applicant complying with all District laws regulating the activities of mortgage lenders, mortgage brokers, and mortgage loan lending and performing all written agreements with borrowers or prospective borrowers, accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied; and

(D) Be continuously maintained thereafter for as long as any license issued under this act remains in force.

(2) If an applicant has not conducted business in the District in any of the 3

calendar years preceding the year in which an original application for a license is filed, the surety bond required under this subsection shall be in the amount of \$12,500.

(3) If an applicant has conducted business as a mortgage lender or mortgage broker in the District in any of the 3 calendar years preceding the year in which an original or renewal application is filed, the applicant shall provide a sworn statement setting forth the total dollar amount of mortgage loans applied for and accepted or mortgage loans applied for, procured, and accepted by the mortgage lender or mortgage broker during the latest calendar year such business was conducted. The bond required in this circumstance shall be determined as follows:

(A) Where the total dollar amount of stated loans was \$1,000,000 or less, the bond shall be in the amount of \$12,500;

(B) Where the total dollar amount of stated loans was more than \$1,000,000 but not more than \$2,000,000, the bond shall be in the amount of \$17,500;

(C) Where the total dollar amount of stated loans was more than \$2,000,000 but not more than \$3,000,000, the bond shall be in the amount of \$25,000; and

(D) Where the total dollar amount of stated loans was more than \$3,000,000, the bond shall be in the amount of \$50,000.

(4) Subject to approval by the Superintendent, if an applicant files 4 or more original or renewal applications at the same time, the applicant may provide a blanket surety bond for all licensed offices in the amount of \$200,000.

(5) Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

**Sec. 5. Issuance of license.**

**New Section  
26-1004**

(a) When an applicant for a license files the application and bond and pays the fees required by this act, the Superintendent shall investigate to determine if the applicant meets the requirements of this act. The Superintendent shall make such investigations as deemed necessary to determine if the applicant has complied with all applicable provisions of law and any regulations promulgated thereunder.

(b) The Superintendent shall approve or deny each application for a license within 60 days after the date from when the application and bond are filed and the fees are paid.

(c) The Superintendent shall issue a license to any applicant who meets the requirements of this act.

(d) Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any pre-existing legal right or obligation of such licensee.

(1) A license issued under this section authorizes the licensee to act as mortgage



lender or mortgage broker under the license at the licensed place of business.

(2) Only 1 place of business may be maintained under any 1 license.

(3) A licensee may maintain more than 1 license under this section provided that a separate application for each license is made pursuant to section 4 and the Superintendent approves such application.

(e)(1) The Superintendent shall include on each license:

(A) The name of the licensee; and

(B) The address at which the business is to be conducted.

(2) A person may not conduct any mortgage loan business at any location or under any name different from the address and name that appears on the person's license.

(f)(1) A licensee may not receive any application for a loan or allow any note or contract for a loan or mortgage, evidence of any note or contract for a loan or mortgage, or evidence of indebtedness to be signed or executed at any place for which the licensee does not have a license, except at the office of:

(A) The attorney for the borrower or for the licensee; or

(B) A title insurance company, a title company, or an attorney for a title insurance company or a title company.

(2) Notwithstanding paragraph (1)(A) of this subsection, a licensee may accept a loan application from a borrower by mail or telephone or in person at the borrower's residence or place of employment to accommodate the borrower at the borrower's request.

(3) The Superintendent shall adopt regulations to ensure that the loan application process is conducted fairly and in a manner consistent with the best interests of both the borrower and mortgage lender.

(g) A license may be issued under this act to a business entity whose principal office is located outside the District provided that the business entity maintains a resident agent within the District at all times during the term of the license, regardless of whether:

(1) The business entity maintains any office within the District; and

(2) The activities of the business entity constitute doing business or having a tax situs in the District.

(h) Each license shall be prominently posted in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Superintendent.

Sec. 6. Acquisition of control; application.

(a) Except as provided in this section, no person shall acquire directly or indirectly 25% or more of the voting shares of a corporation or 25% of the ownership of any other entity licensed to conduct business under this act unless such person first:

(1) Files an application with the Superintendent in such form as the

Superintendent may prescribe from time to time;

(2) Delivers such other information to the Superintendent as the Superintendent may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, officers, principals, and members, and of any proposed new directors, officers, principals, or members of the licensee; and

(3) Pays such application fee as the Superintendent may prescribe.

(b) Upon the filing and investigation of an application, the Superintendent shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, officers, and principals and any proposed new directors, members, officers, and principals have the financial responsibility, character, reputation, experience and general fitness to warrant the belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law. The Superintendent shall grant or deny the application within 60 days after the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Superintendent reciting the reasons for the extension. If the application is denied, the Superintendent shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this section shall not apply to:

(1) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed by this act or a person exempt from this act;

(2) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or operation of law.

(d) The person acquiring an interest in a licensee in a transaction which is exempt from filing an application pursuant to subsection (c) of this section shall send written notice to the Superintendent of such acquisition within 10 days after the closing of such acquisition.

Sec. 7. Rejection of license application.

New Section  
26-1006

(a)(1) If an applicant does not meet the requirements of section 4, the Superintendent shall:

- (A) Immediately notify the applicant in writing of this fact;
- (B) Return the bond filed under section 4 of this act; and
- (C) Refund the license fee.

(2) The Superintendent shall, subject to the appropriations process, keep the investigation fee and application fee.

(b) Within 30 days after the Superintendent denies an application, the Superintendent shall:

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(1) Issue a written decision containing the reasons upon which the denial was based;

(2) Send a copy of the decision to the applicant; and

(3) Advise the applicant of a right to a hearing which shall be held in accordance with Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et. seq.*).

(c)(1) An applicant who seeks a hearing on a license application denial shall file a written request for a hearing within 45 days following receipt of the written decision for denial.

(2) A hearing date established in response to the filing of a notice under this subsection may be postponed only once for a period of up to 30 days after the initial hearing date.

**Sec. 8. License expiration and renewal; annual fee.**

**New Section  
26-1007**

(a) A license expires on the December 31 after its effective date unless the license is renewed for a 1-year term as provided in this section.

(b) Before a license expires, the licensee periodically may renew the license for additional 1-year terms, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Submits to the Superintendent a renewal application on the form that the Superintendent requires; and

(3) Files a bond or bond continuation certificate for the amount required under section 4.

(c) If a license is issued for less than a full year, is surrendered voluntarily, is suspended, or is revoked, the Superintendent may not refund any part of the license fee regardless of the time remaining in the license year.

(d) In order to defray the costs of their examination, supervision, and regulation, every mortgage lender required to be licensed under this act shall pay an annual renewal fee calculated in accordance with a schedule set by regulation promulgated by the Superintendent. The schedule shall bear a reasonable relationship to the total assets of such individual mortgage lenders and to other factors relating to their supervision and regulation. Every mortgage broker required to be licensed under this act shall pay an annual renewal fee calculated in accordance with a schedule set by regulation promulgated by the Superintendent. All such fees shall be assessed on or before April 25, for that calendar year, and on or before April 25 for every calendar year thereafter. All such fees shall be paid by the licensed mortgage lenders and mortgage brokers to the Superintendent on or before May 25 of each calendar year or within 30 days of the receipt of each assessment.

**Sec. 9. Change of place of business.**

**New Section  
26-1008**

(a) A licensee may not change the place of business for which a license is issued unless

the licensee:

- (1) Notifies the Superintendent in writing of the proposed change; and
- (2) Receives the written consent of the Superintendent.

(b) The application for a change of place of business shall be approved unless the Superintendent finds that the applicant has not conducted business under this act efficiently, fairly, in the public interest, and in accordance with all applicable laws and regulations.

(c) Notwithstanding subsection (a)(2) of this section, if the Superintendent does not approve or disapprove of the proposed change of place of business within 30 days of the mailing of the notice required under subsection (a)(1) of this section, the proposed change of place of business shall be deemed approved.

(d) After approval, the applicant for a change of place of business shall give written notice to the Superintendent within 10 days after the commencement of business at the additional or relocated office.

(e) Every licensee shall notify the Superintendent, in writing of the closing of any office not less than 10 days before such closing, and of the name, address, and position of each new principal, officer, member, partner, or director not more than 10 days after such new principal, officer, member, partner, or director assumes such position. Every licensee shall also provide such other information with respect to any such changes as the Superintendent may reasonably require.

Sec. 10. Record keeping requirements.

New Section  
26-1009

(a) Each licensee shall keep and make available to the Superintendent at the licensee's place of business any books and records that the Superintendent, by rule or regulation, requires to enable the Superintendent to enforce this act and any rule or regulation adopted under this act.

(b) Each mortgage lender required to be licensed under this act shall retain for at least 3 years after final payment is made on any mortgage loan or after the mortgage loan is sold, whichever first occurs, copies of the note, settlement statement, truth-in-lending disclosure, and such other papers or records relating to the loan as may be required by rule or regulation.

(c) On approval of the Superintendent, a licensee need not keep at the licensee's place of business any books and records otherwise required by the Superintendent under subsection (a) of this section if the licensee:

(1) Is a federally approved seller-servicer; or

(2)(A) Makes the books and records available to the Superintendent at the licensee's place of business within 5 business days of the Superintendent's official request; and  
(B) Retains the records for at least 60 months in a storage facility disclosed to the Superintendent.

(d) Each mortgage broker required to be licensed under this act shall retain for at least 3

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years after a mortgage loan is made the original contract for his or her compensation, a copy of the settlement statement, an account of fees received in connection with the loan, and such other papers or records as may be required by rule or regulation.

**Sec. 11. Annual report.**

**New Section  
26-1010**

(a) Each mortgage lender or mortgage broker required to be licensed under this act shall annually, on or before March 31, file a written report with the Superintendent containing such information as the Superintendent may require concerning the licensee's operations during the preceding calendar year as to each licensed place of business. Reports shall be accompanied by a sworn affidavit and in the form prescribed by the Superintendent who shall make and publish annually an analysis and recapitulation of the reports.

(b) Annual reports shall include:

(1) The number and total dollar amount of mortgage loans which were originated or purchased by the licensee in the District during each fiscal year for which a valid license is maintained by the licensee; and

(2) The number and dollar amount of all loans where the applicant filed notices of intent to foreclose in the last year, including the borrower's:

(A) Address;

(B) Tract income level;

(C) Racial characteristics; and

(D) Census tract where the property is located.

(c) Any information relating to mortgage loans required to be maintained under subsection (b) of this section shall be itemized in order to disclose for each such item:

(1) The number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage; and

(2) The number and dollar amount of mortgage loans and completed application involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics and gender.

**Sec. 12. Surrender of license.**

**New Section  
26-1011**

(a) A licensee may surrender a license by sending to the Superintendent the license and a written statement that the license is surrendered.

(b) The surrender of a license does not affect any civil or criminal liability of a licensee for acts committed before the license was surrendered.

**Sec. 13. Examinations and investigations.**

**New Section  
26-1012**

(a) The Superintendent, or his or her designated agent, shall examine the affairs, business, premises, and records of each licensee at least once in every 3 year period and at any

other time the Superintendent reasonably considers necessary.

(b)(1) Any person aggrieved by the conduct of a licensee under this subsection in connection with a mortgage loan may file a written complaint with the Superintendent who shall investigate the complaint.

(2) The Superintendent may make any other examination or investigation of any person if the Superintendent has reasonable cause to believe that the person has violated any provision of this act, any regulation adopted under this act, or any other law regulating mortgage loan lending in the District.

(c) In the course of any investigation or examination, the owners, member, officers, directors, partners, and any employees of such mortgage lender or mortgage broker being investigated or examined shall afford the Superintendent full access to all premises, books, and records. For the foregoing purposes, the Superintendent, or his or her designated agent, shall have authority to administer oaths, examine under oath all the aforementioned persons, compel the production of papers and objects of all kinds, subpoena documents or other evidence, and summons and examine under oath any person whose testimony the Superintendent requires.

(d)(1) If any person fails to comply with a subpoena or summons of the Superintendent under this act or to testify concerning any matter about which the person may be interrogated under this act, the Superintendent may file a petition for enforcement with the Civil Actions Branch of the Superior Court of the District of Columbia.

(2) On petition by the Superintendent, the court may order the person to attend and testify or produce evidence.

(e) When it becomes necessary to examine or investigate the books and records of a licensee required to be licensed under this act at a location outside the Washington, D.C. metropolitan region, the licensee shall be liable for, and shall pay to the Superintendent within 30 days, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay a reasonable per diem rate approved by the Superintendent.

Sec. 14. Required loan disclosures.

(a)(1) A licensee who offers to make or procure a loan secured by a first or subordinate mortgage or deed of trust on a single to 4-family home to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender.

(2) The financing agreement shall provide:

(A) The term and principal amount of the loan;

(B) An explanation of the type of mortgage loan being offered;

(C) The rate of interest that will apply to the loan and, if the rate is subject to change, or is a variable rate, or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(D) The points and all fees, if any, to be paid by the borrower or the

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26-1013

seller, or both; and

(E) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration, the financing agreement shall constitute a final binding agreement between the parties as to the items covered by the financing agreement.

(b)(1) The financing agreement executed by the lender shall be delivered to the borrower at least 72 hours before the time of settlement agreed to by the parties and shall include:

(A) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(B) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Prior to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(3) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

Sec. 15. Prohibited practices.

New Section  
26-1014

(a) No mortgage lender or mortgage broker required to be licensed under this act shall:

(1) Obtain any agreement or instrument in which blanks are left to be filled in after execution;

(2) Take an interest in collateral other than the real estate or residential property, including fixtures and appliances thereon, securing a mortgage loan;

(3) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(4) Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(5) Obtain any agreement or instrument executed by a borrower which contains an acceleration clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than failure to make timely payments of interest and principal or to perform other obligations undertaken in the agreement or instrument;

(6) Make, directly or indirectly, any mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, any of the following factors may be considered in determining whether a mortgage loan was made with the intent to foreclose on the borrower's property:

(A) Lack of the probability of full repayment of the loan by the borrower; and

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(B) A significant proportion of similarly foreclosed loans by the lender;  
(7) If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide to the borrower prior to the closing of the mortgage loan:

(A) A settlement statement as required pursuant to the Real Estate Settlement Procedures Act, approved December 22, 1974 (88 Stat. 1724; 12 U.S.C. §2601 *et seq.*), and any regulations promulgated thereunder; and

(B) Any disclosure which is required by the Truth in Lending Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. §1601 *et seq.*), and Regulation Z (12 CFR Part 226); or

(8) Except for an application fee in an amount not to exceed 1% of the original principal amount of the mortgage loan applied for, and documented costs of credit reports and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender which written commitment shall be given not less than 72 hours prior to the closing of the mortgage loan, unless this time period is waived by the borrower.

(b) No mortgage broker required to be licensed under this act shall:

(1) Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, member, officer, or employee;

(2) Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director, member, officer, or employee of the mortgage lender; or

(3)(A) Receive compensation for negotiating, placing, or finding a mortgage loan where a mortgage broker, or any person affiliated with such mortgage broker, has otherwise acted as a real estate broker, agent, or salesperson in connection with the sale of the real estate which secures the mortgage loan and such mortgage broker or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller, or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker's services are first offered to the borrower:



**DISCLOSURE OF DUAL CAPACITY**

**WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE NOT TO EXCEED \_\_\_\_% OF THE LOAN AMOUNT. THIS FEE IS IN ADDITION TO ANY OTHER FEE WE MAY RECEIVE IN CONNECTION WITH THE SALE OR PURCHASE OF THE REAL ESTATE THAT WILL SECURE THE LOAN.**

**WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.**

**THE BORROWER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS DISCLOSURE OF DUAL CAPACITY AND HAVING RECEIVED A COPY HEREOF.**

\_\_\_\_\_  
**BORROWER'S SIGNATURE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**BROKER'S SIGNATURE**

\_\_\_\_\_  
**DATE**

(B) The foregoing notice shall be at least 10-point type and the prospective borrower shall acknowledge receipt of the written notice.

(C) The phrase "person affiliated with such mortgage broker" means any person which is a subsidiary, stockholder, partner, trustee, director, member, officer, or employee of a mortgage broker, and any corporation, 10% or more of the capital stock of which is owned by a mortgage broker or by any person which is a subsidiary, stockholder, partner, trustee, director, member, officer, or employee of a mortgage broker.

(c) Notwithstanding the provisions of subsection (b) of this section, no person shall act as a mortgage broker in connection with any real estate sales transaction entered into prior to the effective date of this act in which such person, or any person affiliated with such person, has acted as a real estate broker, agent, or salesperson and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a mortgage broker in connection with such transaction as of the effective date of this

act.

**Sec. 16. Escrow accounts.**

**New Section  
26-1015**

(a) All moneys required by a mortgage lender to be paid by borrowers in escrow to defray future taxes or insurance premiums, or for other lawful purposes, shall be kept in accounts segregated from accounts of the mortgage lender, and shall not be commingled with other funds of the mortgage lender.

(b) No licensed mortgage lender shall require any borrower who, on the date of execution of the loan or financial transaction, has made a down payment equaling 20% or more of the total purchase price of the property or who has an equity interest in the property equal to, or greater than, 20% of the fair market value of the property, to make advance payments of the real estate taxes or casualty insurance premiums to enable the mortgage lender to have funds on hand for disbursement for payment of such taxes or insurance premiums. Licensed mortgage lenders shall provide such borrowers with a separate statement, in writing, which clearly and conspicuously sets forth the right to pay such taxes and insurance premiums directly. Nothing contained in this subsection shall be construed to prohibit a licensed mortgage lender from obtaining, during any period during which the loan is in default and in consideration for the lender not exercising some or all of the remedies to which it is entitled, a written agreement from the borrower to make such advance payments to enable the mortgage lender to have funds on hand for disbursement from payment of such taxes or insurance premiums.

(c) No licensed mortgage lender shall require any borrower to pay any money in escrow to defray future taxes and insurance premiums, or for any other purposes, in connection with a subordinate mortgage loan, except where escrows for such purposes are not being maintained in connection with the mortgage loan superior to such subordinate mortgage loans.

**Sec. 17. Advertising.**

**New Section  
26-1016**

No mortgage lender or mortgage broker required to be licensed under this act shall use, or cause to be published, any advertisement which:

- (1) Contains any false, misleading, or deceptive statement or representation; or
- (2) Identifies the lender or broker by any name other than the name set forth on the license issued by the Superintendent.

**Sec. 18. Evasive business tactics.**

**New Section  
26-1017**

(a) If the Superintendent finds that the conduct of any other business conceals a violation or evasion of this act, any rule or regulation adopted under this act, or any law regulating mortgage loan lending in the District, the Superintendent may issue a written order to a licensee to:

- (1) Stop doing business at any place in which the other business is conducted or solicited; or

(2) Stop doing business in association or conjunction with the other business.

(b) A licensee who violates an order of the Superintendent issued under this section shall be subject to the penalties provided by section 19.

(c) The Superintendent may request the Corporation Counsel of the District of Columbia to take appropriate action for the enforcement of an order issued under this section.

Sec. 19. Suspension, revocation, and enforcement.

New Section  
26-1018

(a) The Superintendent may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee, while acting on behalf of the licensee:

(1) Makes any material misstatement in an application for a license;

(2) Has been convicted of any crime of moral turpitude;

(3) In connection with any mortgage loan or loan application transaction:

(A) Commits any fraud;

(B) Engages in any illegal or dishonest activities; or

(C) Misrepresents or fails to disclose any material facts to anyone

entitled to that information;

(4) Violates any provision of this act, any rule or regulation adopted under it, or any other law regulating mortgage loan lending in the District;

(5) Engages in a course of conduct consisting of the failure to perform written agreements with borrowers;

(6) Fails to account for funds received or disbursed to the satisfaction of the person supplying or receiving such funds;

(7) Fails to disburse funds in accordance with any agreement connected with, and promptly upon closing of, a mortgage loan, taking into account any applicable right of rescission;

(8) Is convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

(9) Has a judgment entered against such licensee involving fraud, misrepresentation, or deceit;

(10) Has been found by a federal, state, or District agency to be in violation of any law or any regulation applicable to the conduct of the licensee's business;

(11) Refuses to permit an investigation or examination by the Superintendent;

(12) Fails to pay any fee or assessment imposed by this act;

(13) Fails to comply with any order of the Superintendent; or

(14) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been, or will not be, conducted honestly, fairly, equitably, and efficiently.

(b)(1) The Superintendent may enforce the provisions of this section or any rules and

regulations adopted by issuing an order:

(A) To cease and desist from the violation and any further similar violations; and

(B) Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation.

(2) If a violator fails to comply with an order issued under paragraph (1) of this subsection, the Superintendent may impose a civil penalty of up to \$1,000 for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

(c) The Superintendent may request the Corporation Counsel of the District of Columbia to take appropriate action in the Superior Court of the District of Columbia for the enforcement of an order issued under this section. The Corporation Counsel may also seek, and the Superior Court of the District of Columbia may order or decree, damages and such other relief allowed by law, including restitution. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days after the date of the order permanently enjoining the unlawful act or practice. In any action brought by the Corporation Counsel by virtue of this provision, the Corporation Counsel shall be entitled to seek attorney's fees and costs.

(d) In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Superintendent shall consider the following:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and mortgage industry;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

(e) Nothing in this act shall be construed to preclude any individual or entity who suffers loss as a result of any violation of this act from maintaining an action to recover damages or restitution and, as provided by statute, attorney's fees.

Sec. 20. Hearing procedures.

(a) Before the Superintendent takes any action under section 18 or 19, the Superintendent shall give the licensee an opportunity for a hearing.

(b) Notice of the hearing shall be given to the licensee and the hearing shall be held in accordance with the contested case provisions of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*).

(c) The hearing notice to the licensee shall be sent by certified mail, return receipt requested, to the principal place of business of the licensee at least 30 days before the hearing.

**ENROLLED ORIGINAL**

**Sec. 21. Limitation on name of mortgage business.**

**New Section  
26-1020**

A mortgage lender or mortgage broker may not do business under any trade name that misrepresents or tends to misrepresent that the mortgage lender is:

- (1) A bank, trust company, or savings bank;
- (2) A savings and loan association;
- (3) A credit union; or
- (4) An insurance company.

**Sec. 22. Authority of Superintendent to issue rules and regulations.**

**New Section  
26-1021**

The Superintendent is hereby authorized to promulgate such rules and regulations as deemed necessary and appropriate to implement the provisions of this act in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*).

**Sec. 23. Conforming amendments.**

(a) Section 10(a) of An Act To regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real estate brokers in the District of Columbia, approved February 4, 1913 (37 Stat. 657; D.C. Code § 26-710(a)), is amended by inserting the phrase "licensed mortgage brokers, licensed mortgage lenders," after the phrase "licensed bankers,".

**Section  
26-710**

(b) Section 2608 of Chapter 26 of Title 17 of the District of Columbia Municipal Regulations (Business, Occupations and Professions), is repealed.

**DCMR**

**Sec. 24. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

**Sec. 25. The Telecommunications Competition Act of 1996, vetoed by the Mayor on June 25, 1996; veto overridden by the Council on July 3, 1996 (Act 11-300), is amended as follows:**

(a) Section 3(g) is amended by striking the phrase "to enforce the consumer protection provisions in 15 DCMR Chapter 3, and to address a complaint alleging that action by a local exchange provider unreasonably precludes a customer from changing to another local exchange carrier." and inserting the phrase "to regulate terms and conditions of service (but not including rates, charges, and rate structure) to protect the public safety and welfare, provide for continued quality of telecommunications service, and safeguard the rights of consumers." in its place.

**Section  
43-1452**

**ENROLLED ORIGINAL**

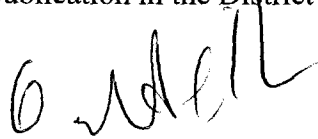
(b) A new section 4a is added to read as follows:

New Section  
43-1453.1

"Sec. 4a. Nothing in this act shall prevent the PSC from proceeding with respect to a formal case in process before the Commission so long as it is not inconsistent with the requirements of the federal Telecommunications Act of 1996."

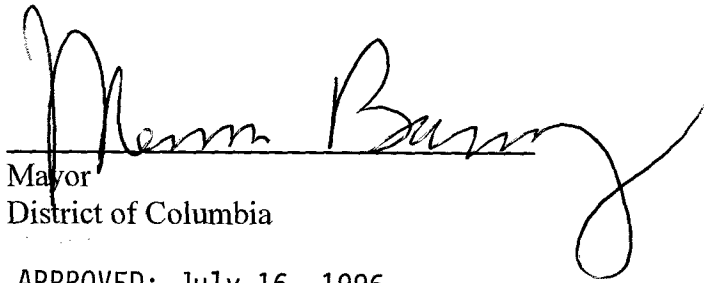
Sec. 26. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



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Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED: July 16, 1996



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

Docket No.

B11-637

[ ] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FIRST READING, 6-4-96

[X] VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

CHAVOUS AND EVANS

ABSENT

[ ] ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*Elizabeth Ford*  
Secretary to the Council

*July 12, 1996*  
Date

[ ] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FINAL READING, 7-3-96

[X] VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

CHAIRMAN CLARKE AND CHAVOUS

ABSENT

[ ] ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

*Elizabeth Ford*  
Secretary to the Council

*July 12, 1996*  
Date

[ ] ITEM ON CONSENT CALENDAR

[ ] ACTION & DATE

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

[ ] ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date