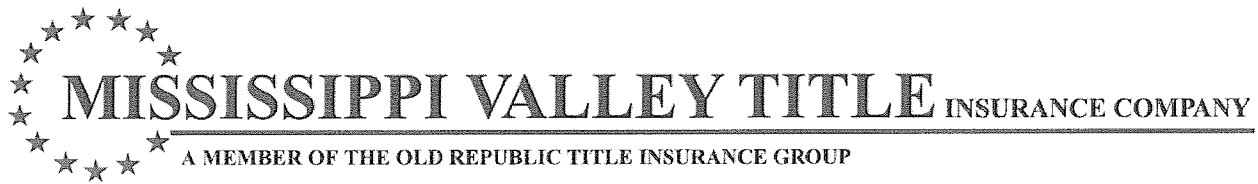




Title Insurance Fall Seminar 2013



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Selected Statutes and Selected Cases

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MISSISSIPPI LEGISLATURE

REGULAR SESSION 2013

By: Representative Snowden

To: Judiciary B

HOUSE BILL NO. 928
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 89-5-8, MISSISSIPPI CODE OF 1972, TO
2 ALLOW RECORDATION OF AN AFFIDAVIT OF SCRIVENER'S ERROR TO CORRECT
3 CERTAIN ERRORS IN INSTRUMENTS AFFECTING TITLE TO REAL ESTATE; AND
4 FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 89-5-8, Mississippi Code of 1972, is
7 amended as follows:

8 89-5-8. (1) Any affidavit relating to the identification,
9 the marital status, the heirship, the relation, the death, or the
10 time of death, of any person who is a party to any instrument
11 affecting the title to real estate, or any affidavit relating to
12 the identification of any corporation or other legal entity which
13 is a party to any instrument affecting the title to real estate,
14 duly sworn to and acknowledged before any officer or person
15 authorized to administer an oath under the laws of this state,
16 shall be recordable in the land records in the office of the
17 chancery clerk in the county where the real estate is situated.

18 (2) (a) Notice of a typographical or other minor error in
19 an instrument affecting the title to real estate may be given by



20 recording an affidavit of scrivener's error. If an affidavit is
21 conspicuously identified as an affidavit of scrivener's error, the
22 chancery clerk shall index the affidavit in the general index
23 under the names of the original parties to the instrument if they
24 are identified in the affidavit, and in the sectional index as
25 provided in the indexing instructions of the affidavit. Notice of
26 the corrective information provided by the affiant is effective
27 upon recordation. An affidavit under this paragraph (a) may be
28 prepared only by an attorney licensed to practice law in this
29 state who prepared any instrument in the chain of title to the
30 subject real estate.

31 (b) The affidavit of scrivener's error shall be sworn
32 to and acknowledged before any officer or person authorized to
33 administer an oath under the laws of this state, and shall be
34 recordable in the land records in the office of the chancery clerk
35 in the county where the real estate is situated.

36 (c) If requested, the chancery clerk shall make a
37 marginal notation on the instrument to which the affidavit refers.

38 (* * *3) Any affidavit so recorded, or a certified copy
39 thereof, shall be admissible as evidence in any action involving
40 the instrument to which it relates or the title to the real estate
41 affected by the instrument and shall be prima facie evidence of
42 the facts stated therein and the marketability of the title to
43 real estate.



44 **SECTION 2.** This act shall take effect and be in force from
45 and after its passage.



By: Representative Snowden

To: Banking and Financial
Services

HOUSE BILL NO. 1233

1 AN ACT TO AMEND SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT A VIOLATION OF THE EXEMPTION FROM THE MISSISSIPPI
3 S.A.F.E. MORTGAGE ACT FOR PERSONS WHO OWNER FINANCE NOT MORE THAN
4 TEN RESIDENTIAL MORTGAGE LOANS IN ONE YEAR WILL NOT AFFECT THE
5 TITLE OF THE PURCHASER/BORROWER OR THE OBLIGATION OF THE
6 PURCHASER/BORROWER UNDER THE TERMS OF THE MORTGAGE LOAN; AND FOR
7 RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 81-18-5, Mississippi Code of 1972, is
10 reenacted and amended as follows:

11 81-18-5. The following are exempt from the provisions of
12 this chapter:

13 (a) Registered mortgage loan originators, when acting
14 for an entity described in Section 81-18-3(ii).

15 (b) Any person who offers or negotiates terms of a
16 residential mortgage loan with or on behalf of an immediate family
17 member of the individual.

18 (c) Any person, estate or trust who owner finances in
19 one (1) calendar year no more than ten (10) residential mortgage
20 loans or no more than twenty percent (20%) of his total



21 residential units sold, whichever is greater. A violation of this
22 paragraph (c) shall not affect the title of the purchaser/borrower
23 or the obligation of the purchaser/borrower under the terms of the
24 mortgage loan.

25 (d) A licensed attorney who negotiates the terms of a
26 residential mortgage loan on behalf of a client as an ancillary
27 matter to the attorney's representation of the client, unless the
28 attorney is compensated by a lender, a mortgage broker, or other
29 mortgage loan originator or by any agent of the lender, mortgage
30 broker, or other mortgage loan originator.

31 (e) A depository institution, or a subsidiary that is
32 owned and controlled by a depository institution, or an
33 institution regulated by the Farm Credit Administration.

34 (f) Any mortgage lender who holds a valid license under
35 the provisions of the Small Loan Regulatory Law, Section 75-67-101
36 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201
37 et seq., and whose mortgage lending activities are limited solely
38 to the servicing of mortgage loans that were in such mortgage
39 lender's own loan portfolio as of December 31, 2009. For the
40 purposes of the exemption in this paragraph (f), "servicing of
41 mortgage loans" shall mean and include the collection of payments
42 of principal and interest, insurance premiums, taxes and other
43 payments required under such mortgage loans, and shall also
44 include activities related to the collection of such payments such
45 as collection calls whether by phone, mail, electronic means or in



46 person, and enforcement remedies permitted by law or at equity.
47 In no event shall the term "servicing of mortgage loans" include
48 the renewal or reworking of the mortgage. If a mortgage loan is
49 renewed or reworked, the lender shall be required to obtain a
50 mortgage license in order to continue any mortgage activity
51 described in this chapter.

52 (g) Any bona fide nonprofit organization and its
53 employees who demonstrate to the satisfaction of the commissioner
54 through the periodic examination of the books and activities of
55 the organization as required in Section 81-18-21, Mississippi Code
56 of 1972, that they continually meet the following requirements, at
57 a minimum:

58 (i) Maintains tax-exempt status under Section
59 501(c)(3) of the Internal Revenue Code of 1986;

60 (ii) Promotes affordable housing or provides
61 homeownership education, or similar services;

62 (iii) Conducts its activities in a manner that
63 serves public or charitable purposes;

64 (iv) Receives funding and revenue and charges fees
65 in a manner that does not incentivize the organization or its
66 employees to act other than in the best interests of its clients;

67 (v) Compensates employees in a manner that does
68 not incentivize employees to act other than in the best interests
69 of its client; and



70 (vi) Provides to or identifies for the borrower
71 residential mortgage loans with terms that are favorable to the
72 borrower and comparable to mortgage loans and housing assistance
73 provided under government housing assistance programs.

74 (h) Any person who is an employee of a government
75 agency or housing finance agency who acts as a mortgage loan
76 originator in accordance with his duties as an employee of such
77 agency.

78 (i) Any person who performs clerical or support duties
79 at the direction of and subject to the supervision and instruction
80 of a state-licensed loan originator or a registered loan
81 originator. For purposes of this paragraph (i), the term
82 "clerical or support duties" may include:

83 (i) The receipt, collection, distribution and
84 analysis of information common for the processing or underwriting
85 of a residential mortgage loan; and

86 (ii) Communicating with a consumer to obtain the
87 information necessary for the processing or underwriting of a
88 loan, to the extent that such communication does not include
89 offering or negotiating loan rates or terms, or counseling
90 consumers about residential mortgage loan rates or terms.

91 **SECTION 2.** This act shall take effect and be in force from
92 and after July 1, 2013.



By: Senator(s) Kirby

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2111

1 AN ACT TO AMEND SECTION 27-43-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE MANNER IN WHICH NOTICE OF THE EXPIRATION OF THE TIME OF
3 REDEMPTION WITH RESPECT TO LAND SOLD AT A TAX SALE IS MADE TO THE
4 OWNER OF THE PROPERTY IF THE OWNER IS A RESIDENT OF THIS STATE; TO
5 INCREASE THE FEE PAID TO THE SHERIFF FOR SERVICE OF SUCH NOTICE;
6 AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 27-43-3, Mississippi Code of 1972, is
9 amended as follows:

10 27-43-3. The clerk shall issue the notice to the sheriff of
11 the county of the reputed owner's residence, if he * * * is a
12 resident of the State of Mississippi, and the sheriff shall be
13 required to serve * * * notice as * * * follows:

14 (a) Upon the reputed owner personally, if he can be
15 found in the county after diligent search and inquiry, by handing
16 him a true copy of the notice;

17 (b) If the reputed owner cannot be found in the county
18 after diligent search and inquiry, then by leaving a true copy of
19 the notice at his usual place of abode with the spouse of the
20 reputed owner or some other person who lives at his usual place of



21 abode above the age of sixteen (16) years, and willing to receive
22 the copy of the notice; or

23 (c) If the reputed owner cannot be found after diligent
24 search and inquiry, and if no person above the age of sixteen (16)
25 years who lives at his usual place of abode can be found at his
26 usual place of abode who is willing to receive the copy of the
27 notice, then by posting a true copy of the notice on a door of the
28 reputed owner's usual place of abode.

29 The sheriff shall make his return to the chancery clerk
30 issuing * * * the notice. The clerk shall also mail a copy
31 of * * * the notice to the reputed owner at his usual street
32 address, if * * * it can be ascertained after diligent search and
33 inquiry, or to his post-office address if only that can be
34 ascertained, and he shall note such action on the tax sales
35 record. The clerk shall also be required to publish the name and
36 address of the reputed owner of the property and the legal
37 description of * * * the property in a public newspaper of the
38 county in which the land is located, or if no newspaper is
39 published as such, then in a newspaper having a general
40 circulation in * * * the county. * * * The publication shall be
41 made at least forty-five (45) days prior to the expiration of the
42 redemption period.

43 If * * * the reputed owner is a nonresident of the State of
44 Mississippi, then the clerk shall mail a copy of * * * the
45 notice * * * to the reputed owner in the same manner as * * * set



46 out in this section for notice to a resident of the State of
47 Mississippi, except that * * * notice served by the sheriff shall
48 not be required.

49 Notice by mail shall be by registered or certified mail. In
50 the event the notice by mail is returned undelivered and the * * *
51 notice as * * * required in this section to be served by the
52 sheriff is returned not found, then the clerk shall make further
53 search and inquiry to ascertain the reputed owner's street and
54 post-office address. If the reputed owner's street or post-office
55 address is ascertained after the additional search and inquiry,
56 the clerk shall again issue notice as * * * set out in this
57 section. If * * * notice is again issued and it is again returned
58 not found and if notice by mail is again returned undelivered,
59 then the clerk shall file an affidavit to that effect and shall
60 specify * * * in the affidavit the acts of search and inquiry made
61 by him in an effort to ascertain the reputed owner's street and
62 post-office address and * * * the affidavit shall be retained as a
63 permanent record in the office of the clerk and * * * that action
64 shall be noted on the tax sales record. If the clerk is still
65 unable to ascertain the reputed owner's street or post-office
66 address after making search and inquiry for the second time, then
67 it shall not be necessary to issue any additional notice but the
68 clerk shall file an affidavit specifying * * * the acts of search
69 and inquiry made by him in an effort to ascertain the reputed
70 owner's street and post-office address and * * * the affidavit



71 shall be retained as a permanent record in the office of the clerk
72 and * * * that action shall be noted on the tax sale record.

73 For examining the records to ascertain the record owner of
74 the property, the clerk shall be allowed a fee of Fifty Dollars
75 (\$50.00); for issuing the notice the clerk shall be allowed a fee
76 of Two Dollars (\$2.00) and, for mailing * * * the notice and
77 noting * * * that action on the tax sales record, a fee of One
78 Dollar (\$1.00); and for serving the notice, the sheriff shall be
79 allowed a fee of * * * Thirty-five Dollars (\$35.00). For issuing
80 a second notice, the clerk shall be allowed a fee of Five Dollars
81 (\$5.00) and, for mailing * * * the notice and noting * * * that
82 action on the tax sales record, a fee of Two Dollars and Fifty
83 Cents (\$2.50), and for serving the second notice, the sheriff
84 shall be allowed a fee of * * * Thirty-five Dollars (\$35.00). The
85 clerk shall also be allowed the actual cost of publication. * * *
86 The fees and cost shall be taxed against the owner of * * * the
87 land if the * * * land is redeemed, and if not redeemed,
88 then * * * the fees are to be taxed as part of the cost against
89 the purchaser. The failure of the landowner to actually receive
90 the notice herein required shall not render the title void,
91 provided the clerk and sheriff have complied with the duties * * *
92 prescribed for them in this section.

93 Should the clerk inadvertently fail to send notice as
94 prescribed in this section, then * * * the sale shall be void and



95 the clerk shall not be liable to the purchaser or owner upon
96 refund of all purchase money paid.

97 **SECTION 2.** This act shall take effect and be in force from
98 and after July 1, 2013.



By: Senator(s) Stone

To: Judiciary, Division B

SENATE BILL NO. 2385
(As Sent to Governor)

1 AN ACT TO CREATE THE OFFENSE OF OFFERING A FALSE INSTRUMENT
2 AGAINST A PUBLIC SERVANT; TO PROVIDE PENALTIES FOR VIOLATIONS; AND
3 FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. (1) A person commits the crime of offering a
6 false instrument for recording against a law enforcement officer,
7 public official or public employee if the person offers, for
8 recording, a lien or encumbrance that relates to or affects the
9 real or personal property, or an interest therein, or a
10 contractual relationship of a law enforcement officer, public
11 official or public employee, knowing that the lien or encumbrance
12 contains a materially false statement or materially false
13 information, with the intent to defraud, intimidate, or harass the
14 law enforcement officer, public official or public employee, or to
15 impede the law enforcement officer, public official or public
16 employee in the performance of his or her duties.

17 (2) Any person who violates this section, upon conviction,
18 shall be punished as follows:



19 (a) For a first offense, by imprisonment for not more
20 than six (6) months or a fine not to exceed One Thousand Dollars
21 (\$1,000.00), or both.

22 (b) For a subsequent offense, by imprisonment for not
23 more than five (5) years or a fine of not more than Five Thousand
24 Dollars (\$5,000.00), or both.

25 **SECTION 2.** This act shall take effect and be in force from
26 and after July 1, 2013.



By: Senator(s) Jackson (15th)

To: Business and Financial
InstitutionsSENATE BILL NO. 2696
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 81-18-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "QUALIFYING INDIVIDUAL" AS USED
3 IN THE MISSISSIPPI S.A.F.E. MORTGAGE ACT; TO AMEND SECTION
4 81-18-9, MISSISSIPPI CODE OF 1972, TO REVISE THE CONTENTS OF THE
5 MORTGAGE BROKER AND LENDER APPLICATIONS AND TO INCREASE THE
6 INITIAL LOAN ORIGINATOR LICENSE FEE; TO AMEND SECTION 81-18-13,
7 MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN LICENSING PROCEDURES
8 AND CRITERIA; TO AMEND SECTION 81-18-15, MISSISSIPPI CODE OF 1972,
9 TO INCREASE THE LICENSE AND RENEWAL FEES FOR MORTGAGE BROKERS,
10 MORTGAGE LENDERS AND LOAN ORIGINATORS; TO AMEND SECTION 81-18-17,
11 MISSISSIPPI CODE OF 1972, TO INCREASE THE BRANCH LICENSE AND
12 RENEWAL FEES; TO AMEND SECTION 81-18-21, MISSISSIPPI CODE OF 1972,
13 TO REVISE THE EXAMINATION FEE WHICH MAY BE CHARGED BY THE
14 COMMISSIONER OF BANKING FOR THE EXAMINATION OF THE BOOKS AND
15 RECORDS OF ANY LICENSEE; TO AMEND SECTION 81-18-23, MISSISSIPPI
16 CODE OF 1972, TO REQUIRE LICENSEES WHO ARE INVOLVED IN CIVIL
17 ACTIONS TO NOTIFY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
18 REGISTRY; TO AMEND SECTION 81-18-35, MISSISSIPPI CODE OF 1972, TO
19 REQUIRE EACH LICENSEE TO MAINTAIN A JOURNAL OF SERVICED LOANS AT
20 ITS PRINCIPAL PLACE OF BUSINESS FOR ALL MISSISSIPPI RESIDENTIAL
21 LOANS THAT THE LICENSEE OWNS AND/OR SERVICES; AND FOR RELATED
22 PURPOSES.

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

24 **SECTION 1.** Section 81-18-3, Mississippi Code of 1972, is
25 amended as follows:

26 81-18-3. For purposes of this chapter, the following terms
27 shall have the following meanings:



28 (a) "Application" means the submission of a borrower's
29 financial information in anticipation of a credit decision,
30 whether written or computer-generated. If the submission does not
31 state or identify a specific property, the submission is an
32 application for a prequalification and not an application for a
33 federally related mortgage loan. The subsequent addition of an
34 identified property to the submission converts the submission to
35 an application for a federally related mortgage loan.

36 (b) "Borrower" means a person who submits an
37 application for a residential mortgage loan.

38 (c) "Branch" means a location of a company in or
39 outside of the state that conducts business as a mortgage broker
40 or mortgage lender. A location shall be considered a branch
41 regarding mortgage broker or mortgage lender activities in any of
42 the following:

43 (i) If the location is used on any type of
44 advertisement;

45 (ii) If any type of record, loan file or
46 application of the company is located at the location, with the
47 exception of unstaffed storage facilities; or

48 (iii) If the activities of a mortgage loan
49 originator occur at the location.

50 (d) "Commissioner" means the Commissioner of the
51 Mississippi Department of Banking and Consumer Finance.



52 (e) "Commitment" means a statement by a lender required
53 to be licensed under this chapter that sets forth the terms and
54 conditions upon which the lender is willing to make a particular
55 mortgage loan to a particular borrower.

56 (f) "Company" means a licensed mortgage broker or
57 mortgage lender under this chapter.

58 (g) "Control" means the direct or indirect possession
59 of the power to direct or cause the direction of the management
60 and policies of a person, whether through the ownership of voting
61 securities, by contract or otherwise, and shall include
62 "controlling," "controlled by," and "under common control with."

63 (h) "Department" means the Department of Banking and
64 Consumer Finance of the State of Mississippi.

65 (i) "Depository institution" has the same meaning as in
66 Section 3 of the Federal Deposit Insurance Act, and includes any
67 credit union.

68 (j) "Executive officer" means the chief executive
69 officer, the president, the principal financial officer, the
70 principal operating officer, each vice president with
71 responsibility involving policy-making functions for a significant
72 aspect of a person's business, the secretary, the treasurer, or
73 any other person performing similar managerial or supervisory
74 functions with respect to any organization whether incorporated or
75 unincorporated.



76 (k) "Federal banking agencies" means the Board of
77 Governors of the Federal Reserve System, the Comptroller of the
78 Currency, the Director of the Office of Thrift Supervision, the
79 National Credit Union Administration, and the Federal Deposit
80 Insurance Corporation.

81 (l) "Housing finance agency" means any authority that
82 is chartered by a state to help meet the affordable housing needs
83 of the residents of the state, is supervised directly or
84 indirectly by the state government, is subject to audit and review
85 by the state in which it operates, and whose activities make it
86 eligible to be a member of the National Council of State Housing
87 Agencies.

88 (m) "Immediate family member" means a spouse, child,
89 sibling, parent, grandparent or grandchild. This term includes
90 stepparents, stepchildren, stepsiblings and adoptive
91 relationships.

92 (n) "Individual" means a "natural person."

93 (o) "License" means a license to act as a mortgage
94 broker or mortgage lender issued by the department under this
95 chapter.

96 (p) "Licensee" means a person who is required to be
97 licensed as a mortgage broker or mortgage lender under this
98 chapter.

99 (q) "Loan processor or underwriter" means an individual
100 who performs clerical or support duties as an employee at the



101 direction of and subject to the supervision and instruction of a
102 person licensed or exempt from licensing under this chapter.

103 For the purposes of this paragraph (q), the term "clerical or
104 support duties" may include, after the receipt of an application:

105 (i) The receipt, collection, distribution and
106 analysis of information common for the processing or underwriting
107 of a residential mortgage loan; and

108 (ii) Communicating with a consumer to obtain the
109 information necessary for the processing or underwriting of a
110 loan, to the extent that the communication does not include
111 offering or negotiating loan rates or terms, or counseling
112 consumers about residential mortgage loan rates or terms.

113 An individual engaging solely in loan processor or
114 underwriter activities, shall not represent to the public, through
115 advertising or other means of communicating or providing
116 information including the use of business cards, stationery,
117 brochures, signs, rate lists or other promotional items, that the
118 individual can or will perform any of the activities of a mortgage
119 loan originator.

120 (r) "Lock-in agreement" means a written agreement
121 stating the terms of the lock-in fee.

122 (s) "Lock-in fee" means a fee collected by a licensee
123 to be paid to a lender to guarantee an interest rate or a certain
124 number of points on a mortgage loan from the lender.



125 (t) "Make a mortgage loan" means to advance funds,
126 offer to advance funds or make a commitment to advance funds to a
127 borrower.

128 (u) "Misrepresent" means to make a false statement of a
129 substantive fact or to engage in, with intent to deceive or
130 mislead, any conduct that leads to a false belief that is material
131 to the transaction.

132 (v) "Mortgage broker" means any person who directly or
133 indirectly or by electronic activity solicits, places or
134 negotiates residential mortgage loans for others, or offers to
135 solicit, place or negotiate residential mortgage loans for others
136 that does not close residential mortgage loans in the company
137 name, does not use its own funds, or who closes residential
138 mortgage loans in the name of the company, and sells, assigns or
139 transfers the loan to others within forty-eight (48) hours of the
140 closing.

141 (w) "Mortgage lender" means any person who directly or
142 indirectly or by electronic activity originates, makes, funds or
143 purchases or offers to originate, make, or fund or purchase a
144 residential mortgage loan or who services residential mortgage
145 loans.

146 (x) "Mortgage_lending process" means the process
147 through which a person seeks or obtains a mortgage loan,
148 including, but not limited to, solicitation, application,
149 origination, negotiation of terms, third-party provider services,



150 underwriting, signing and closing, and funding of the loan.
151 Documents involved in the mortgage_lending process include, but
152 are not limited to, uniform residential loan applications or other
153 loan applications, appraisal reports, HUD-1 Settlement Statements,
154 supporting personal documentation for loan applications such as
155 W-2 forms, verifications of income and employment, bank
156 statements, tax returns, payroll stubs and any required
157 disclosures.

158 (y) "Mortgage loan originator" means an individual who:

159 (i) Takes a residential mortgage loan application;

160 and

161 (ii) Offers or negotiates terms of a residential
162 mortgage loan for compensation or gain. The term "mortgage loan
163 originator" does not include:

164 * * *1. An individual engaged solely as a
165 loan processor or underwriter except as otherwise provided in this
166 chapter;

167 * * *2. A person or entity that only
168 performs real estate brokerage activities and is licensed or
169 registered in accordance with Mississippi law, unless the person
170 or entity is compensated by a lender, a mortgage broker, or other
171 mortgage loan originator or by any agent of such lender, mortgage
172 broker, or other mortgage loan originator; and



173 * * *3. A person or entity solely involved
174 in extensions of credit relating to time-share plans, as that term
175 is defined in Title 11 USCS, Section 101(53D).

176 (z) "Nationwide Mortgage Licensing System and Registry"
177 means a mortgage licensing system developed and maintained by the
178 Conference of State Bank Supervisors and the American Association
179 of Residential Mortgage Regulators for the licensing and
180 registration of licensed mortgage loan originators.

181 (aa) "Natural person" means a human being, as
182 distinguished from an artificial person created by law.

183 (bb) "Nontraditional mortgage product" means any
184 mortgage product other than a thirty-year fixed rate mortgage.

185 (cc) "Offering or negotiating a residential mortgage
186 loan" means:

187 (i) Presenting particular mortgage loan terms for
188 consideration by a borrower; or

189 (ii) Communicating directly or indirectly with a
190 borrower for purposes of reaching a mutual understanding about
191 prospective loan terms * * *.

192 "Offering or negotiating" does not include the following:
193 the mere sharing of general information about a financing source;
194 discussing hypothetical financing options, i.e., options not
195 related to specific financing source; giving the homebuyer a list
196 of available financing sources; discussing a buyer's ability to



197 afford a home; presenting or discussing generic facts or generic
198 rate sheets; closing personal property transactions.

199 (dd) "Person" means a natural person, sole
200 proprietorship, corporation, company, limited liability company,
201 partnership or association.

202 (ee) "Principal" means a person who, directly or
203 indirectly, owns or controls an ownership interest of ten percent
204 (10%) or more in a corporation or any other form of business
205 organization, regardless of whether the person owns or controls
206 the ownership interest through one or more persons or one or more
207 proxies, powers of attorney, nominees, corporations, associations,
208 limited liability companies, partnerships, trusts, joint-stock
209 companies, other entities or devises, or any combination thereof.

210 (ff) "Qualifying individual" means an owner or employee
211 of a mortgage broker or mortgage lender who submits documentation
212 of two (2) years' experience directly related to mortgage * * *
213 activities and who shall be primarily responsible for the
214 operations of the licensed mortgage broker or mortgage lender.

215 This individual will also be designated as the qualifying
216 individual in the Nationwide Mortgage Licensing System and
217 Registry.

218 (gg) "Real estate brokerage activity" means any
219 activity that involves offering or providing real estate brokerage
220 services to the public, including:



221 (i) Acting as a real estate agent or real estate
222 broker for a buyer, seller, lessor or lessee of real property;
223 (ii) Bringing together parties interested in the
224 sale, purchase, lease, rental or exchange of real property;
225 (iii) Negotiating, on behalf of any party, any
226 portion of a contract relating to the sale, purchase, lease,
227 rental or exchange of real property (other than in connection with
228 providing financing with respect to any such transaction);
229 (iv) Engaging in any activity for which a person
230 engaged in the activity is required to be registered or licensed
231 as a real estate agent or real estate broker under any applicable
232 law; and
233 (v) Offering to engage in any activity, or act in
234 any capacity, described in subparagraph (i), (ii), (iii) or (iv)
235 of this paragraph (gg).
236 (hh) "Records" or "documents" means any item in hard
237 copy or produced in a format of storage commonly described as
238 electronic, imaged, magnetic, microphotographic or otherwise, and
239 any reproduction so made shall have the same force and effect as
240 the original thereof and be admitted in evidence equally with the
241 original.
242 (ii) "Registered mortgage loan originator" means any
243 individual who:
244 (i) Meets the definition of mortgage loan
245 originator and is an employee of a depository institution, a



246 subsidiary that is owned and controlled by a depository
247 institution and regulated by a federal banking agency or an
248 institution regulated by the Farm Credit Administration; and
249 (ii) Is registered with, and maintains a unique
250 identifier through, the Nationwide Mortgage Licensing System and
251 Registry.

252 (jj) "Residential mortgage loan" means any loan
253 primarily for personal, family or household use that is secured by
254 a mortgage, deed of trust or other equivalent consensual security
255 interest on a dwelling (as defined in Section 103(v) of the Truth
256 in Lending Act) or residential real estate upon which is
257 constructed or intended to be constructed a dwelling (as so
258 defined).

259 (kk) "Residential real estate" means any real property
260 located in Mississippi upon which is constructed or intended to be
261 constructed a dwelling.

262 (ll) "Service a mortgage loan" means the collection or
263 remittance for another, the right to collect or remit for another,
264 or the collection of the company's own loan portfolio, whether or
265 not the company originated, funded or purchased the loan in the
266 secondary market, of payments of principal and interest, trust
267 items such as insurance and taxes, and any other payments pursuant
268 to a mortgage loan.

269 (mm) "Taking an application for a residential mortgage
270 loan" means * * * a receipt of an application for the purpose of



271 deciding whether or not to extend the requested offer of a loan to
272 the borrower whether the application is received directly or
273 indirectly from the borrower. However, an individual whose only
274 role with respect to the application is physically handling a
275 completed application form or transmitting a completed form to a
276 lender on behalf of a prospective borrower does not take an
277 application.

278 (nn) "Unique identifier" means a number or other
279 identifier assigned by protocols established by the Nationwide
280 Mortgage Licensing System and Registry.

281 **SECTION 2.** Section 81-18-9, Mississippi Code of 1972, is
282 amended as follows:

283 81-18-9. (1) Applicants for a license shall apply in a form
284 as prescribed by the commissioner. Each such form shall contain
285 content as set forth by rule, regulation, instruction or procedure
286 of the commissioner and may be changed or updated as necessary by
287 the commissioner in order to carry out the purposes of this
288 chapter.

289 (2) The mortgage broker and mortgage lender application
290 through the Nationwide Mortgage Licensing System and Registry
291 shall include, but is not limited to, the following:

292 (a) The legal name, residence and business address of
293 the applicant and, if applicable, the legal name, residence and
294 business address of every principal and executive officer,
295 together with the résumé of the applicant and of every principal



296 and executive officer of the applicant. In addition, an
297 independent credit report obtained from a consumer-reporting
298 agency described in Section 603(p) of the Fair Credit Reporting
299 Act and information related to any administrative, civil or
300 criminal findings by any governmental jurisdiction of every
301 principal and executive officer.

302 (b) The legal name of the mortgage broker or mortgage
303 lender in addition to the name under which the applicant will
304 conduct business in the state, neither of which may be already
305 assigned to a licensed mortgage broker or mortgage lender.

306 (c) The complete address of the applicant's principal
307 place of business, branch office(s) and any other locations at
308 which the applicant will engage in any business activity covered
309 by this chapter. All locations shall be within the United States
310 of America or a territory of the United States of America,
311 including Puerto Rico and the U.S. Virgin Islands.

312 (d) A copy of the certificate of incorporation, if a
313 Mississippi corporation.

314 (e) Documentation satisfactory to the department as to
315 a certificate of existence of authority to transact business
316 lawfully in Mississippi from the Mississippi Secretary of State's
317 office, if a limited liability company, partnership, trust or any
318 other group of persons, however organized. This paragraph does
319 not pertain to applicants organized as an individual or as a sole
320 proprietorship.



321 (f) If a foreign entity, a copy of a certificate of
322 authority to conduct business in Mississippi and the address of
323 the principal place of business of the foreign entity.

324 (g) Documentation of a minimum of two (2) years'
325 experience directly * * * related to mortgage * * * activities by
326 a person named as the qualifying individual of the company. * * *
327 The qualifying individual shall be primarily responsible for the
328 operations of the licensed mortgage broker or mortgage lender.
329 Only one (1) qualifying individual shall be named for Mississippi
330 and this person shall be the qualifying individual for only one
331 (1) licensee. * * * Evidence of experience shall include, where
332 applicable:

333 (i) Copies of business licenses issued by
334 governmental agencies.

335 (ii) * * * Employment history of the person filing
336 the application for at least two (2) years before the date of the
337 filing of an application, including, but not limited to, job
338 descriptions, length of employment, names, addresses and phone
339 numbers for past employers.

340 * * *

341 (* * * iii) Any other data and pertinent
342 information as the department may require with respect to the
343 applicant, its directors, principals, trustees, officers, members,
344 contractors or agents. A résumé alone shall not be sufficient
345 proof of employment history.



346 (3) The * * * mortgage broker and mortgage lender
347 applications shall be filed on the Nationwide Mortgage Licensing
348 System and Registry together with the following:

349 (a) The license fee specified in Section 81-18-15;

350 (b) An original or certified copy of a surety bond in
351 favor of the State of Mississippi for the use, benefit and
352 indemnity of any person who suffers any damage or loss as a result
353 of the company's breach of contract or of any obligation arising
354 therefrom or any violation of law; and

355 (c) A set of fingerprints from any local law
356 enforcement agency from the following applicants:

357 (i) All persons operating as a sole proprietorship
358 that plan to conduct a mortgage-brokering or lending business in
359 the State of Mississippi;

360 (ii) Partners in a partnership or principal owners
361 of a limited liability company that own at least ten percent (10%)
362 of the voting shares of the company;

363 (iii) Any shareholders owning ten percent (10%) or
364 more of the outstanding shares of the corporation;

365 (iv) All executive officers of the applicant;

366 (v) All loan originators; and

367 (vi) The named qualifying individual of the
368 company as required in Section 81-18-9(2)(g). The applicant shall
369 name only one (1) individual as the qualifying individual for the
370 State of Mississippi.



(d) At least one (1) employee shall be licensed as a loan originator at a licensed location.

(4) In connection with an application for licensing as a mortgage broker or lender under this chapter, the required stockholders, owners, directors and executive officers of the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the individual's identity, including:

(a) Fingerprints from any local law enforcement agency for submission to the Federal Bureau of Investigation and any governmental entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer-reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(5) Upon receipt of an application for licensure, the department or designated third party shall conduct an



396 investigation as it deems necessary to determine that the
397 applicant and its officers, directors and principals are of good
398 character and ethical reputation; that the applicant demonstrates
399 reasonable financial responsibility; and that the applicant has
400 reasonable policies and procedures to receive and process customer
401 grievances and inquiries promptly and fairly.

402 (6) The commissioner shall not license an applicant unless
403 he is satisfied that the applicant will operate its mortgage
404 activities in compliance with the laws, rules and regulations of
405 this state and the United States.

406 (7) If an applicant satisfies the requirements of this
407 chapter for a mortgage broker or mortgage lender license, the
408 commissioner shall issue the license unless the commissioner finds
409 any of the following:

410 (a) The applicant has had a mortgage lender, mortgage
411 broker or mortgage servicer license revoked in any governmental
412 jurisdiction, except that a subsequent formal vacation of the
413 revocation shall not be deemed a revocation; or

414 (b) The applicant or its controlling persons has been
415 convicted of, or pled guilty or nolo contendere to, (i) a felony
416 in a domestic, foreign or military court during the seven-year
417 period preceding the date of application for licensing; or (ii) a
418 crime at any time preceding the date of application involving an
419 act of fraud, dishonesty, a breach of trust, or money laundering,
420 or (iii) a misdemeanor of fraud, theft, forgery, bribery,



421 embezzlement or making a fraudulent or false statement in any
422 jurisdiction. However, any pardon or expungement of a conviction
423 shall not be a conviction for purposes of this subsection.

424 (* * *8) Applicants for a mortgage loan originator license
425 shall apply in a form as prescribed by the commissioner and shall
426 be filed on the Nationwide Mortgage Licensing System and Registry.
427 Each such form shall contain content as set forth by rules,
428 regulations, instructions or procedures of the commissioner and
429 may be changed or updated as necessary by the commissioner in
430 order to carry out the purposes of this chapter. The initial
431 license of a mortgage loan originator shall be accompanied by a
432 fee of * * * Two Hundred Dollars (\$200.00), to be paid to the
433 Nationwide Mortgage Licensing System and Registry, and any
434 additional fees as required by the Nationwide Mortgage Licensing
435 System and Registry. The commissioner shall not issue a mortgage
436 loan originator license unless the commissioner makes at a minimum
437 the following findings:

438 (a) The applicant has never had a mortgage loan
439 originator license revoked in any governmental jurisdiction,
440 except that a later formal vacation of that revocation shall not
441 be deemed a revocation.

442 (b) The applicant has not been convicted of, or pled
443 guilty or nolo contendere to, (i) a felony in a domestic, foreign
444 or military court during the seven-year period preceding the date
445 of application for licensing * * *; or (ii) a crime * * * at any



446 time preceding the date of application involving an act of fraud,
447 dishonesty, a breach of trust or money laundering; or (iii) a
448 misdemeanor of fraud, theft, forgery, bribery, embezzlement or
449 making a fraudulent or false statement in any jurisdiction. * * *
450 However, any pardon or expungement of a conviction shall not be a
451 conviction for purposes of this subsection.

452 (c) The applicant has demonstrated financial
453 responsibility, character and general fitness such as to command
454 the confidence of the community and to warrant a determination
455 that the mortgage loan originator will operate honestly, fairly
456 and efficiently within the purposes of this chapter.

457 (d) The applicant has completed the prelicensing
458 education requirement described in Section 81-18-14(1).

459 (e) The applicant has passed a written test that meets
460 the test requirement described in Section 81-18-14(7).

461 (f) The applicant has met the surety bond requirement
462 as provided in Section 81-18-11.

463 (g) This individual must work for a Mississippi
464 licensed company and work from the location licensed with the
465 department. The licensed location that he or she is assigned to
466 must be within one hundred twenty-five (125) miles of his or her
467 residency. If the licensed loan originator resides and works in
468 Mississippi, then he or she may work from any licensed location of
469 the licensed company within the State of Mississippi. However, an
470 owner of a minimum of ten percent (10%) of a licensed company or



471 the named qualifying individual on file with the department, who
472 is a licensed loan originator with the department, may work from
473 any licensed location of the licensed company within the State of
474 Mississippi in the capacity of a loan originator as described in.
475 this chapter.

476 * * *

477 (* * *9) In order to fulfill the purposes of this chapter,
478 the commissioner is authorized to establish relationships or
479 contracts with the Nationwide Mortgage Licensing System and
480 Registry or other entities designated by the Nationwide Mortgage
481 Licensing System and Registry to collect and maintain records and
482 process transaction fees or other fees related to licensees or
483 other persons subject to this chapter.

484 (* * *10) In connection with an application for licensing
485 as a mortgage loan originator, the applicant shall, at a minimum,
486 furnish to the Nationwide Mortgage Licensing System and Registry
487 information concerning the applicant's identity, including:

488 (a) Fingerprints for submission to the Federal Bureau
489 of Investigation, and any governmental agency or entity authorized
490 to receive that information for a state, national and
491 international criminal history background check; and

492 (b) Personal history and experience in a form
493 prescribed by the Nationwide Mortgage Licensing System and
494 Registry, including the submission of authorization for the



495 Nationwide Mortgage Licensing System and Registry and the
496 commissioner to obtain:

497 (i) An independent credit report obtained from a
498 consumer-reporting agency described in Section 603(p) of the Fair
499 Credit Reporting Act; and

500 (ii) Information related to any administrative,
501 civil or criminal findings by any governmental jurisdiction.

502 (* * *11) For the purposes of this section and in order to
503 reduce the points of contact which the Federal Bureau of
504 Investigation may have to maintain for purposes of subsection
505 (* * *10) (a) and (b) (ii) of this section, the commissioner may
506 use the Nationwide Mortgage Licensing System and Registry as a
507 channeling agent for requesting information from and distributing
508 information to the Department of Justice or any governmental
509 agency.

510 (* * *12) For the purposes of this section and in order to
511 reduce the points of contact which the commissioner may have to
512 maintain for purposes of subsection (* * *10) (b) (i) and (ii) of
513 this section, the commissioner may use the Nationwide Mortgage
514 Licensing System and Registry as a channeling agent for requesting
515 and distributing information to and from any source so directed by
516 the commissioner.

517 **SECTION 3.** Section 81-18-13, Mississippi Code of 1972, is
518 amended as follows:



519 81-18-13. (1) In order to fulfill the purposes of this
520 chapter, the commissioner is authorized to establish relationships
521 or contracts with the Nationwide Mortgage Licensing System and
522 Registry or other entities designated by the Nationwide Mortgage
523 Licensing System and Registry to collect and maintain records and
524 process transaction fees or other fees related to licensees or
525 other persons subject to this chapter.

526 * * *

527 (* * *2) Within thirty (30) days after receipt of a
528 completed application, final verification from the Department of
529 Public Safety and/or FBI, and payment of licensing fees prescribed
530 by this chapter, the department shall either grant or deny the
531 request for license. However, if the Federal Financial
532 Institutions Examination Council (FFIEC) prescribes a lesser
533 period of time within which the department shall either grant or
534 deny the request for license, then that time limitation shall
535 supersede this subsection.

536 (* * *3) A person shall not be indemnified for any act
537 covered by this chapter or for any fine or penalty incurred under
538 this chapter as a result of any violation of this chapter or
539 regulations adopted under this chapter, due to the legal form,
540 corporate structure, or choice of organization of the person,
541 including, but not limited to, a limited liability corporation.

542 **SECTION 4.** Section 81-18-15, Mississippi Code of 1972, is
543 amended as follows:



544 81-18-15. (1) Each mortgage broker and mortgage lender
545 license shall remain in full force and effect until relinquished,
546 suspended, revoked or expired. With each initial application for
547 a license to operate as a mortgage broker or mortgage lender, the
548 applicant shall pay through the Nationwide Mortgage Licensing
549 System and Registry to the commissioner a license fee of * * * One
550 Thousand Five Hundred Dollars (\$1,500.00); however, if the initial
551 mortgage broker or mortgage lender license is issued between
552 November 1 and December 31, the license will expire December 31 of
553 the following licensing year. Upon the expiration of the initial
554 license, the licensee shall pay an annual renewal fee of * * * One
555 Thousand Dollars (\$1,000.00) on or before December 31 of each
556 year. If the annual renewal fee remains unpaid, the license shall
557 expire, but not before December 31 of any year for which the
558 annual renewal fee has been paid. If * * * the renewal fee is not
559 paid before the expiration date of the license, then the * * *
560 licensee shall be liable for the initial license fee, which
561 is * * * One Thousand Five Hundred Dollars (\$1,500.00), plus a
562 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
563 for each day * * * after the expiration of * * * the license. All
564 licensing fees and penalties shall be paid into the Consumer
565 Finance Fund of the department. If the application is withdrawn
566 or denied, the application fee along with any other applicable fee
567 are not refundable.



568 (2) The minimum standards for license renewal for mortgage
569 loan originators shall include the following:

570 (a) The mortgage loan originator continues to meet the
571 minimum standards for license issuance under Section 81-18-9(4).

572 (b) The mortgage loan originator has satisfied the
573 annual continuing education requirements described in Section
574 81-18-15(5).

575 (c) The mortgage loan originator has paid all required
576 fees for renewal of the license. Annual renewals of this license
577 shall require a fee of * * * One Hundred Dollars (\$100.00).

578 (3) The license of a mortgage loan originator failing to
579 satisfy the minimum standards for license renewal shall expire.
580 The commissioner may adopt procedures for the reinstatement of
581 expired licenses consistent with the standards established by the
582 Nationwide Mortgage Licensing System and Registry. If the renewal
583 fee remains unpaid, the license shall expire, but not before
584 December 31 of any year for which the annual renewal fee has been
585 paid. However, if the initial loan originator license is issued
586 between November 1 and December 31, the license will expire
587 December 31 of the following licensing year. If the renewal fee
588 is not paid before the expiration date of the license, the
589 mortgage loan originator shall be liable for the initial license
590 fee, which is * * * Two Hundred Dollars (\$200.00), in order to
591 renew.



592 (4) Any licensee making timely and proper application for a
593 license renewal shall be permitted to continue to operate under
594 its existing license until its application is approved or
595 rejected, but shall not be released from or otherwise indemnified
596 for any act covered by this chapter or for any penalty incurred
597 under this chapter as a result of any violation of this chapter or
598 regulations adopted under this chapter, pending final approval or
599 disapproval of the application for the license renewal.

600 (5) In order to meet the annual continuing education
601 requirements referred to in Section 81-18-15(2)(b), a licensed
602 mortgage loan originator shall complete at least twelve (12) hours
603 of education approved in accordance with subsection (2) of this
604 section, which shall include at least:

605 (a) Three (3) hours of federal law and regulations;
606 (b) Two (2) hours of ethics, which shall include
607 instruction on fraud, consumer protection and fair lending issues;
608 (c) Two (2) hours of training related to lending
609 standards for the nontraditional mortgage product marketplace; and
610 (d) Two (2) hours of education related to the
611 Mississippi S.A.F.E. Mortgage Act.

612 (6) For the purposes of subsection (5) of this section,
613 continuing education courses shall be reviewed, and approved by
614 the Nationwide Mortgage Licensing System and Registry based upon
615 reasonable standards. Review and approval of a continuing



616 education course shall include review and approval of the course
617 provider.

618 (7) Nothing in this section shall preclude any education
619 course, as approved by the Nationwide Mortgage Licensing System
620 and Registry, that is provided by the employer of the mortgage
621 loan originator or an entity that is affiliated with the mortgage
622 loan originator by an agency contract, or any subsidiary or
623 affiliate of such employer or entity.

624 (8) Continuing education may be offered either in a
625 classroom, online or by any other means approved by the Nationwide
626 Mortgage Licensing System and Registry.

627 (9) A licensed mortgage loan originator:

628 (a) Except for Section 81-18-15(3) and subsection (13)
629 of this section, may only receive credit for a continuing
630 education course in the year in which the course is taken; and

631 (b) May not take the same approved course in the same
632 or successive years to meet the annual requirements for continuing
633 education * * *.

634 (10) A licensed mortgage loan originator who is an approved
635 instructor of an approved continuing education course may receive
636 credit for the licensed mortgage loan originator's own annual
637 continuing education requirement at the rate of two (2) hours
638 credit for every one (1) hour taught.

639 (11) A person having successfully completed the education
640 requirements approved by the Nationwide Mortgage Licensing System



641 and Registry in subsection (5) of this section for any state shall
642 be accepted as credit towards completion of continuing education
643 requirements in Mississippi.

644 (12) A licensed mortgage loan originator who later becomes
645 unlicensed must complete the continuing education requirements for
646 the last year in which the license was held prior to issuance of a
647 new or renewed license.

648 (13) A person meeting the requirements of Section
649 81-18-15(2)(a) and (c) may make up any deficiency in continuing
650 education as established by rule or regulation of the
651 commissioner.

652 **SECTION 5.** Section 81-18-17, Mississippi Code of 1972, is
653 amended as follows:

654 81-18-17. (1) A license may not be transferred or assigned.

655 (2) No licensee shall transact business under any name other
656 than that designated in the license.

657 (3) A licensed mortgage broker or mortgage lender shall
658 notify the department through the Nationwide Mortgage Licensing
659 System and Registry of any change in the address of its principal
660 place of business or of any change in the address of an additional
661 licensed branch location within thirty (30) days of the change.

662 (4) No licensee shall open a branch office in this state or
663 a branch office outside this state from which the licensee has
664 direct contact with consumers regarding origination or brokering
665 Mississippi residential property, without prior approval of the



666 department. An application for any branch office shall be made
667 through the Nationwide Mortgage Licensing System and Registry on a
668 form prescribed by the department, which shall include at least
669 evidence of compliance with subsection (1) of Section 81-18-25 as
670 to that branch and shall be accompanied by payment of a
671 nonrefundable application fee of * * * Three Hundred Dollars
672 (\$300.00) and at least one (1) loan originator application
673 licensed at that branch office. The application shall be approved
674 unless the department finds that the applicant has not conducted
675 business under this chapter in accordance with law. Each branch
676 office that currently holds a branch license shall renew that
677 branch license before the expiration date of the main company
678 license, on or before December 31; however, if the initial branch
679 license is issued between November 1 and December 31, the license
680 will expire December 31 of the following licensing year. The
681 license renewal shall be on a form prescribed by the department
682 with a nonrefundable renewal application fee of * * * One Hundred
683 Dollars (\$100.00). If the annual renewal fee remains unpaid, the
684 license shall expire, but not before December 31 of any year for
685 which the annual renewal fee has been paid. If the renewal fee is
686 not paid before the expiration date of the license, the branch
687 shall be liable for the initial license fee, which is * * * Three
688 Hundred Dollars (\$300.00), in order to renew.

689 (5) A licensed mortgage broker or mortgage lender shall
690 notify the department within thirty (30) days by submitting a



691 sponsorship removal in the Nationwide Mortgage Licensing System
692 and Registry when a loan originator is released from its
693 employment. In addition, the licensed mortgage broker or mortgage
694 lender shall notify the department within thirty (30) days through
695 the Nationwide Mortgage Licensing System and Registry when there
696 is a change of the qualifying individual of the licensee.

697 **SECTION 6.** Section 81-18-21, Mississippi Code of 1972, is
698 amended as follows:

699 81-18-21. (1) Any person required to be licensed under this
700 chapter shall maintain in its offices, or such other location as
701 the department shall permit, the books, accounts and records
702 necessary for the department to determine whether or not the
703 person is complying with the provisions of this chapter and the
704 rules and regulations adopted by the department under this
705 chapter. These books, accounts and records shall be maintained
706 apart and separate from any other business in which the person is
707 involved and may represent historical data for three (3) years
708 preceding the date of the last license application date forward.
709 The books, accounts and records shall be kept in a secure location
710 under conditions that will not lead to their damage or
711 destruction. If the licensee wishes to keep the files in a
712 location other than the location listed on the license, then the
713 licensee first must submit a written request on a form designated
714 by the department and gain written approval from the commissioner
715 before storing the files at an off-site secure location.



716 (2) To assure compliance with the provisions of this
717 chapter, the department may examine the books and records of any
718 licensee without notice during normal business hours. The
719 commissioner shall charge the licensee an examination fee in an
720 amount not less than Three Hundred Dollars (\$300.00) nor more than
721 Six Hundred Dollars (\$600.00) * * * per day with a maximum
722 examination fee of Two Thousand Four Hundred Dollars (\$2,400.00)
723 for each office or location within the State of Mississippi, and
724 an examination fee in an amount not less than Three Hundred
725 Dollars (\$300.00) nor more than Eight Hundred Dollars (\$800.00)
726 per day for each office or location outside the State of
727 Mississippi, plus any actual expenses incurred while examining the
728 licensee's records or books that are located outside the State of
729 Mississippi. However, in no event shall a licensee be examined
730 more than once in a two-year period unless for cause shown based
731 upon consumer complaint and/or other exigent reasons as determined
732 by the commissioner.

733 (3) The department, its designated officers and employees,
734 or its duly authorized representatives, for the purposes of
735 discovering violations of this chapter and for the purpose of
736 determining whether any person or individual reasonably suspected
737 by the commissioner of conducting business that requires a license
738 under this chapter, may investigate those persons and individuals
739 and examine all relevant books, records and papers employed by
740 those persons or individuals in the transaction of business, and



741 may summon witnesses and examine them under oath concerning
742 matters as to the business of those persons, or other such matters
743 as may be relevant to the discovery of violations of this chapter,
744 including, without limitation, the conduct of business without a
745 license as required under this chapter.

746 (4) Each licensee, individual or person subject to this
747 chapter shall make available to the commissioner upon request the
748 books and records relating to the operations of the licensee,
749 individual or person subject to this chapter. The commissioner
750 shall have access to those books and records and interview the
751 officers, principals, mortgage loan originators, employees,
752 independent contractors, agents, and customers of the licensee,
753 individual or person subject to this chapter concerning their
754 business.

755 (5) Each licensee, individual or person subject to this
756 chapter shall make or compile reports or prepare other information
757 as directed by the commissioner in order to carry out the purposes
758 of this section, including, but not limited to:

759 (a) Accounting compilations;

760 (b) Information lists and data concerning loan
761 transactions in a format prescribed by the commissioner; or

762 (c) Such other information deemed necessary to carry
763 out the purposes of this section.

764 (6) In making any examination or investigation authorized by
765 this chapter, the commissioner may control access to any documents



766 and records of the licensee or person under examination or
767 investigation. The commissioner may take possession of the
768 documents and records or place a person in exclusive charge of the
769 documents and records in the place where they are usually kept.
770 During the period of control, no individual or person shall remove
771 or attempt to remove any of the documents and records except under
772 a court order or with the consent of the commissioner. Unless the
773 commissioner has reasonable grounds to believe the documents or
774 records of the licensee have been or are at risk of being altered
775 or destroyed for purposes of concealing a violation of this
776 chapter, the licensee or owner of the documents and records shall
777 have access to the documents or records as necessary to conduct
778 its ordinary business affairs.

779 (7) The commissioner shall report regularly violations of
780 this chapter, as well as enforcement actions and other relevant
781 information, to the Nationwide Mortgage Licensing System and
782 Registry subject to the provisions contained in Section 81-18-63.

783 (8) Examinations and investigations conducted under this
784 chapter and information obtained by the department, except as
785 provided in subsection (7) of this section, in the course of its
786 duties under this chapter are confidential.

787 (9) In the absence of malice, fraud or bad faith a person is
788 not subject to civil liability arising from the filing of a
789 complaint with the department, furnishing other information
790 required by this chapter, information required by the department



791 under the authority granted in this chapter, or information
792 voluntarily given to the department related to allegations that a
793 licensee or prospective licensee has violated this chapter.

794 (10) In order to carry out the purposes of this section, the
795 commissioner may:

796 (a) Accept and rely on examination or investigation
797 reports made by other government officials, within or without this
798 state; or

799 (b) Accept audit reports made by an independent
800 certified public accountant for the licensee, individual or person
801 subject to this chapter in the course of that part of the
802 examination covering the same general subject matter as the audit
803 and may incorporate the audit report in the report of the
804 examination, report of investigation or other writing of the
805 commissioner.

806 (11) The authority of this section shall remain in effect,
807 whether such a licensee, individual or person subject to this
808 chapter acts or claims to act under any licensing or registration
809 law of this state, or claims to act without that authority.

810 (12) No licensee, individual or person subject to
811 investigation or examination under this section may knowingly
812 withhold, abstract, remove, mutilate, destroy or secrete any
813 books, records, computer records or other information.

814 **SECTION 7.** Section 81-18-23, Mississippi Code of 1972, is
815 amended as follows:



816 81-18-23. (1) Each mortgage licensee shall submit to the
817 Nationwide Mortgage Licensing System and Registry reports of
818 condition, which shall be in such form and shall contain such
819 information as the Nationwide Mortgage Licensing System and
820 Registry may require.

821 (2) The department, in its discretion, may relieve any
822 company from the payment of any penalty, in whole or in part, for
823 good cause.

824 (3) If a company fails to pay a penalty from which it has
825 not been relieved, the department may maintain an action at law to
826 recover the penalty.

827 (4) Within fifteen (15) days of the occurrence of any of the
828 following events, a company shall file with the Nationwide
829 Mortgage Licensing System and Registry the applicable change in
830 the disclosure questions and shall submit the information through
831 the Nationwide Mortgage Licensing System and Registry or file a
832 written report with the commissioner describing the event and its
833 expected impact on the activities of the company in this state:

834 (a) The filing for bankruptcy or reorganization by the
835 company;

836 (b) The institution of revocation or suspension
837 proceedings against the company by any state or governmental
838 authority;



839 (c) Any felony indictment of the company or any of its
840 directors, executive officers, qualifying individual or loan
841 originators;

842 (d) Any felony conviction of the company or any of its
843 directors, executive officers, qualifying individual or loan
844 originators; or

845 (e) Any misdemeanor conviction, in which fraud is an
846 essential element, of any of the company's directors, executive
847 officers, qualifying individual or loan originators.

848 (5) * * * Licensees who are involved in civil actions shall
849 notify the Nationwide Mortgage Licensing System and Registry
850 within sixty (60) days of the occurrence. An explanation and
851 supporting documentation for each civil action concerning the
852 company shall be submitted through the Nationwide Mortgage
853 Licensing System and Registry. The department may require
854 additional information as necessary.

855 **SECTION 8.** Section 81-18-35, Mississippi Code of 1972, is
856 amended as follows:

857 81-18-35. (1) Each licensee shall maintain a journal of
858 mortgage transactions at the principal place of business as stated
859 on its license * * * for all Mississippi residential loans that
860 the licensee originated and/or funded. This journal shall be
861 separate from non-Mississippi loans. The journal shall include at
862 least the following information:

863 (a) Name of applicant and co-applicant, if applicable;



864 (b) Date of application; and
865 (c) Disposition of loan application, indicating date of
866 loan closing, loan denial, withdrawal and name of lender if
867 applicable.

868 (2) Each licensee shall maintain a journal of serviced loans
869 at the principal place of business as stated on its license, for
870 all Mississippi residential loans that the licensee owns and/or
871 services. This journal shall be kept separate from
872 non-Mississippi loans. The journal shall include at least the
873 following information:

874 (a) The number of mortgage loans the licensee is
875 servicing;

876 (b) The type and characteristics of the loans;

877 (c) The number of serviced loans in default, along with
878 a breakdown of thirty-, sixty- and ninety-day delinquencies;

879 (d) Information on loss mitigation activities,
880 including details on workout arrangements undertaken; and

881 (e) Information on foreclosures commenced.

882 **SECTION 9.** This act shall take effect and be in force from
883 and after July 1, 2013.

