

# ***Statutes and Regulations*** **Mortgage Lending**

**July 2008**

*(Centralized Statutes and Regulations not included)*



DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS  
AND PROFESSIONAL LICENSING***

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MORTGAGE LENDING.**

**Article**

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**ARTICLE 1.  
LICENSING.**

**Section**

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**Sec. 06.60.010. License required.** (a) Except as provided under AS 06.60.015, a person, including a person doing business from outside this state, may not operate as a mortgage lender or mortgage broker in this state unless the person is licensed under this chapter.

(b) Except as provided by AS 06.60.017, a person may not operate as an originator in this state unless the person is a natural person who is

- (1) licensed as an originator under this chapter; and
- (2) works under exclusive contract for, or as an employee of, a mortgage licensee.

(c) A mortgage license may cover more than one location of a mortgage licensee.

(d) A person who operates as both a mortgage lender and a mortgage broker is only required to obtain one mortgage license.

**Sec. 06.60.015. Exemptions; requirements of registration.** (a) Except as provided by AS 06.60.370(c) and by (b) and (c) of this section, this chapter does not apply to a person who operates as a mortgage lender or mortgage broker if the person is

(1) a person who is authorized to engage in business as a bank, bank holding company, savings institution, savings and loan association, trust company with banking powers, or credit union under the laws of this state, another state, the United States, a territory of the United States, or the District of Columbia, and whose mortgage loan activity is subject to the general supervision, regulation, and examination of a regulatory body of this state, another state, the United States, a territory of the United States, or the District of Columbia;

(2) a subsidiary or an operating subsidiary of a person who is identified (1) of this subsection, or of a bank holding company or savings and loan holding company, if the subsidiary or operating subsidiary certifies to the department on a form provided by the department that the subsidiary or operating subsidiary is exempt from this chapter because of applicable federal statute or regulation;

(3) an employee of a person identified in (1) or (2) of this subsection;

(4) an exclusive agent of a person identified in (1) or (2) of this subsection, if the person identified in (1) or (2) of this subsection has received a determination from a regulatory body of the United States government, based on applicable federal law, that the exclusive agent is exempt from this chapter;

(5) a nonprofit corporation that makes mortgage loans to promote home ownership or home improvements; in this paragraph, "nonprofit corporation" means a corporation that qualifies under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code) for an exemption from federal income taxation;

(6) an agency of the federal government, a state government, a municipality, or a quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of a state or the United States;

(7) a person who acts as a fiduciary for an employee pension benefit plan qualified under 26 U.S.C. (Internal Revenue Code) and who makes mortgage loans solely to participants of the plan from assets of the plan;

(8) a person who acts in a fiduciary capacity conferred by the authority of a court; or

(9) a person who is licensed by the United States Small Business Administration as a small business investment company under 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958).

(b) A person who is listed in (a)(1) - (9) of this section shall file a registration form to obtain an exemption under (a) of this section. The department shall determine the form and content of the registration form.

(c) A person who is licensed under AS 06.20 is exempt from the requirements of this chapter, except that the person is subject to AS 06.60.320 - 06.60.380.

(d) In this section, "bank holding company" has the meaning given in 12 U.S.C. 1841 (Bank Holding Company Act).

**Sec. 06.60.017. Small mortgage lenders and originators.** (a) Notwithstanding AS 06.60.010, the department may register

(1) a person to operate as a small mortgage lender;

(2) a natural person to operate as an originator for a small mortgage lender if the person is an employee of, or working under exclusive contract for, the small mortgage lender.

(b) To qualify for registration as a small mortgage lender, a person shall

(1) submit an application on a form established by the department;

(2) pay a fee of \$150;

(3) certify that all money used in the operation of the person's business as a small mortgage lender belongs to the person and is not borrowed or received from another person; and

(4) be approved by the department under (d) of this section.

(c) To qualify for registration as an originator under this section, a person shall

(1) submit an application on a form established by the department;

(2) pay a fee of \$75;

(3) be approved by the department under (d) of this section.

(d) Before approving an application of a person under this section, the department shall determine that

(1) if the person is applying for registration as a small mortgage lender, the financial responsibility, experience, character, and general fitness of the person, and of the person's directors, officers, members, owners, and other principals, and the organization and operation of the applicant indicate that the business will be operated efficiently and fairly, in the public interest, and under the law; and

(2) the person has not

(A) been enjoined by a court of competent jurisdiction from engaging in an aspect of the business of providing financial services to the public; and

(B) within the previous seven years,

(i) been prohibited by a federal or state regulatory agency from engaging in, participating in, or controlling a finance-related activity that involves providing financial services to the public;

(ii) been convicted, including a conviction based on a guilty plea or a plea of nolo contendere, of a felony or a misdemeanor involving fraud, misrepresentation, or dishonesty;

(iii) committed an act, made an omission, or engaged in a practice that constitutes a breach of a fiduciary duty;

(iv) made a false material statement on an application submitted under this chapter; or

(v) violated a provision of this chapter, a regulation adopted under this chapter, or an order of the department under this chapter.

(e) A registration issued under this chapter remains in effect for two years after the registration is issued.

(f) A small mortgage lender may renew a registration by submitting to the department 30 days before the expiration of the registration

(1) a renewal application in the form and manner established by the department;

(2) a biennial registration fee of \$150; and

(3) a report identifying any changes in the information provided under (b) of this section.

(g) An originator may renew a registration as an originator by submitting to the department 30 days before the expiration of the licensee's registration

(1) a renewal application in the form and manner established by the department;

(2) a biennial registration fee of \$75; and

(3) a report identifying any changes in the information provided under (c) of this section.

(h) An application under this section is considered granted unless, within 30 days after the department determines it has received a complete application, the department notifies the applicant that the department has denied the application because of the applicant's noncompliance with this section.

(i) The department may adopt regulations to implement this section.

(j) In this section,

(1) "registration" means registration under this section;

(2) "small mortgage lender" means a person who is registered under this section.

**Sec. 06.60.020. Application for mortgage license.** An application for a mortgage license must

(1) be in writing;

(2) be signed by the applicant and notarized;

(3) be on the form prescribed by the department;

(4) contain the name of the applicant, including the name of the business, and of the natural person who is designated to obtain the originator license under AS 06.60.025;

(5) if the applicant is a partnership or an association not covered by (6) or (7) of this section, contain the name and both the residence and business addresses of each partner of the partnership or member of the association;

(6) if the applicant is a corporation, contain the name and both the residence and business addresses of each officer and director of the corporation, and a shareholder holding

(A) 10 percent or more of the total outstanding voting shares, if the corporation has fewer than 75 shareholders; or

(B) more than 50 percent of the outstanding voting shares in the corporation, if the corporation has 75 or more shareholders;

(7) if the applicant is a limited liability company, contain the name and both the residence and business addresses of each member of the company, and any manager of the company who individually owns more than 50 percent of the limited liability company;

(8) contain the mailing address of the applicant, the street address and city, if any, for each business location that will be covered by the license, and an identification of the applicant's principal office;

(9) if requested by the department, include a complete set of fingerprints of the applicant and of the directors, officers, members, owners, and other principals of the applicant as specified by the department to obtain a report of criminal justice information and a national criminal history record check;

(10) contain other information that the department may require concerning the organization and operations of the applicant and the financial responsibility, background, experience, and activities of the applicant and its directors, officers, members, owners, and other principals.

**Sec. 06.60.025. Application for originator license.** An application for an originator license must

(1) be in writing;

(2) be signed by the applicant and notarized;

(3) be on a form prescribed by the department;

(4) contain the name and residence address of the applicant;

(5) include a complete set of fingerprints of the applicant to obtain a report of criminal justice information and a national criminal history record check; and

(6) contain other information or supporting material that the department may require concerning the applicant, including other forms of identification of the applicant.

**Sec. 06.60.026. Transfer of originator license.** A person who holds an originator license may not transfer or assign the originator license.

**Sec. 06.60.027. Fingerprint submissions.** The department shall submit fingerprints provided under AS 06.60.020 and 06.60.025 to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400.

**Sec. 06.60.030. Investigation.** The department shall investigate an applicant for a license to determine if the applicant satisfies the requirements of this chapter for the license.

**Sec. 06.60.035. Fees and expenses.** (a) Except as provided by (c) of this section, when an applicant submits an application for a license under this chapter to the department, the applicant shall pay to the department

(1) a nonrefundable application fee of \$250 in partial payment of those investigation expenses incurred by the department; and

(2) a biennial license fee of \$500 for the period that terminates two years after the date the license is issued; after this payment, the biennial license fee is due every two years on the anniversary date of the original issuance of the license.

(b) An applicant shall pay all reasonable costs and reasonable investigative fees incurred by the department before the department issues a license.

(c) An applicant is not required to pay the application fee or the biennial license fee under (a) of this section if the applicant is applying for a mortgage license and an originator license, is the principal owner or legally authorized manager of the mortgage license applicant, and is designated in the application under AS 06.60.020(4) as the individual to receive an originator license for the mortgage licensee.

**Sec. 06.60.040. Competency testing.** (a) A person who applies for an originator license shall pass a competency test conducted and graded by the department. The department shall establish the scope, content, and minimum passing score of the test by regulation.

(b) If an individual fails the competency test, the individual may take the competency test again. The department may charge a fee of \$150 for each additional competency test that the department provides to the person.

**Sec. 06.60.045. Bonding.** (a) An applicant for a mortgage license shall file with the application submitted to the department under AS 06.60.020 a bond with one or more sureties in the amount of \$25,000 under which the applicant is the obligor. The bond must be satisfactory to the department.

(b) The bond required by (a) of this section shall be for the use of the department, the Department of Law, or another person to recover for a claim for relief against the obligor under this chapter. The bond must state that the obligor will faithfully conform to and abide by the provisions of this chapter and all regulations adopted under this chapter and will pay the department, the Department of Law, or another person all money that may become due or owing to the department, the Department of Law, or the other person from the obligor under this chapter.

(c) An applicant for a mortgage license that covers more than one location is not required to file more than one bond.

(d) The bond required under (a) of this section must be continuous until the department revokes or otherwise terminates the license.

(e) If the department determines that the bond required under (a) of this section is unsatisfactory for any reason, the department may require the mortgage licensee to file with the department, within 10 days after the receipt of a written demand from the department, an additional bond that complies with the provisions of this section.

**Sec. 06.60.050. Decision on application.** (a) Within 30 days after the date the department determines that it has received a complete application under AS 06.60.020 or 06.60.025, the required bond if the application is for a mortgage license, and any required fees and investigative costs, the department shall either grant or deny the license.

(b) If the department denies the license, the department shall promptly notify the applicant. The notification must state the reason for the denial and that the applicant is entitled to a hearing on the denial.

**Sec. 06.60.060. Determinations for mortgage licensing.** Before granting a mortgage license, the department shall determine that

- (1) the applicant has complied with the requirements of this chapter for obtaining the mortgage license;
- (2) the financial responsibility, experience, and general fitness of the applicant and of the applicant's directors, officers, members, owners, and other principals, the character of the applicant and the applicant's directors, officers, members, owners, and other principals, and the organization and operation of the applicant indicate that the business will be operated efficiently and fairly, in the public interest, and under the law; and
- (3) the department has not found grounds for denial of a mortgage license under AS 06.60.065.

**Sec. 06.60.065. Determinations for originator licensing.** Before granting an originator license to a person, the department shall determine that the applicant has

- (1) complied with the requirements of this chapter and paid all fees for obtaining the originator license;
- (2) not been enjoined by a court of competent jurisdiction from engaging in an aspect of the business of providing financial services to the public; and
- (3) not, within the previous seven years,
  - (A) been prohibited by a federal or state regulatory agency from engaging in, participating in, or controlling a finance-related activity that involves providing financial services to the public;
  - (B) been convicted, including a conviction based on a plea of guilty, no contest, or nolo contendere, of a felony or a misdemeanor involving fraud, misrepresentation, or dishonesty;
  - (C) committed an act, made an omission, or engaged in a practice that constitutes a breach of a fiduciary duty;
  - (D) made a material false statement in an application submitted under this chapter; or
  - (E) violated a provision of this chapter, a regulation adopted under this chapter, or an order of the department under this chapter.

**Sec. 06.60.070. Form and contents of license.** A license must be in a form established by the department and must state the full name of the licensee. A mortgage license must state the address for each office of the business where the business of the licensee is to be conducted. If a mortgage licensee conducts business on the Internet, the mortgage license must also state the registered domain address through which the mortgage licensee conducts the mortgage licensee's business and the physical location of the mortgage licensee's main business office.

**Sec. 06.60.075. License availability.** A licensee shall provide a copy of the license to a person who requests a copy.

**ARTICLE 2.  
LICENSE DURATION, RENEWAL, INACTIVITY, AND SURRENDER.**

**Section**

- 80. Duration of license**
- 85. Renewal of license**
- 90. Inactive license**
- 95. Reactivation of inactive license**
- 97. Surrender of license**

**Sec. 06.60.080. Duration of license.** A license issued under this chapter remains in effect for two years after the license is issued unless revoked, suspended, surrendered, or becoming inactive under this chapter.

**Sec. 06.60.085. Renewal of license.** (a) If a licensee intends to renew a license, the licensee shall submit to the department 30 days before the expiration of the licensee's license

- (1) a renewal application in the form and manner established by the department;
- (2) the biennial license fee required by AS 06.60.105;
- (3) if the renewal is for a mortgage license, a report identifying any changes in the information provided under AS 06.60.020(4) - (8);
- (4) if the renewal is for an originator license, certificates or other documents that show the continuing education requirements of AS 06.60.160 have been satisfied; and
- (5) if the renewal is for an originator license, the fund fee required by AS 06.60.550.

(b) A renewal under (a) of this section is considered granted unless, within 30 days after the department determines it has received a completed renewal application containing the items in (a) of this section, the department notifies the licensee that the department has denied the renewal application because of the licensee's noncompliance with this title.

**Sec. 06.60.090. Inactive license.** (a) A license may become inactive under this section.

(b) To be eligible to have a mortgage license become inactive, all mortgage loans of a licensee must have been paid in full or sold.

(c) For a license to become inactive, a licensee shall provide the department with a written request that the license become inactive and return the license certificate to the department. The request must include the licensee's name, address, and other information that the department requires to process the request and a statement by the licensee that all mortgage loans of the licensee have been paid in full or sold.

(d) The department shall issue an inactive license certificate to a person whose license becomes inactive under this section.

(e) If a person holds a license that becomes inactive under this section, the person may not operate as a mortgage lender, mortgage broker, or originator under the license in this state until the license is reactivated.

(f) If a license becomes inactive under this section, the license remains inactive until the license expires, the person surrenders the license, or the person who holds the inactive license provides the department with a written request that the license be reactivated. The request must include the information that the department requires to process the request.

(g) While a license is inactive under this section, the person holding the inactive license shall pay the biennial license fee as required by AS 06.60.105 and inform the department of any change that occurs in the name and address of the person, the location of the person's business, or in the business operations or control of the person, but the person is not required to maintain the bond required by AS 06.60.045 or to file the annual report required by AS 06.60.100.

(h) Notwithstanding AS 06.60.120, while a license is inactive under this section, the person who holds the license may not transfer the license to another person.

(i) While a license is inactive under this section, the person is not required to surrender the license under AS 06.60.097(b).

(j) While a license is inactive under this section, the person holding the inactive license shall continue to maintain records as required by AS 06.60.135 for the business transactions of the person that occurred before the license became inactive.

(k) While a license is inactive under this section, the department may take action against the license, the person holding the inactive license, or both for noncompliance with this chapter before the license became inactive or for noncompliance with this section while the license is inactive.

(l) A licensee whose license lapses under this chapter is not eligible for an inactive license under this section unless the license is reactivated under AS 06.60.095.

(m) A person holding a license that is inactive under this section may not engage in activities for which the license is required, but may receive commissions or other payments from a person who contracted with or employed the licensee for services, if the services were performed while the licensee was actively licensed.

(n) Except as otherwise provided in this section and by regulations adopted by the department, the provisions of this chapter do not apply to a person holding an inactive license under this section.

**Sec. 06.60.095. Reactivation of inactive license.** (a) Except as provided in (b) and (c) of this section, a person who has an inactive license certificate under AS 06.60.090 may apply to the department for an active license and pay the required fees.

(b) A person is eligible for reactivation of an inactive license if the person's license has been in an inactive status for less than 24 months from the anniversary date of the issuance of the initial inactive license certificate. If the person has been in an inactive status for 24 months or longer, the person may obtain a license only by satisfying the qualifications applicable to initial licensure.

(c) The department may issue an active license that has been converted from inactive status under this section for the term remaining on the license before it became inactive.

**Sec. 06.60.097. Surrender of license.** (a) A licensee may surrender a license issued to the licensee by delivering written notice to the department that the licensee intends to surrender the license, except that a mortgage licensee may not surrender a license until all loans of that mortgage licensee have either been paid in full or sold.

(b) A licensee shall surrender a license issued to the licensee if the licensee has not engaged in mortgage loan activity for 12 consecutive months.

(c) Surrender of a license under this section does not affect the licensee's civil or criminal liability for acts committed before surrender of the license.

### ARTICLE 3. LICENSEE OBLIGATIONS.

#### Section

- 100. Annual report**
- 105. Biennial license fee**
- 110. Location of business**
- 115. Change of place of business**
- 120. Transfer of business**
- 130. Change in business control or business operations**
- 135. Records of mortgage licensee**
- 140. Availability of out-of-state records**
- 145. Disqualified persons**
- 150. Posting of license**
- 155. Restriction on originator license work**
- 157. Mortgage licensee restrictions on performance of originator activities**
- 159. Mortgage licensee employment of, contract with, and liability for originator**
- 160. Continuing education requirements**

**Sec. 06.60.100. Annual report.** (a) On or before March 15, or on another date established by the department by regulation, of each year a mortgage licensee shall file a report with the department giving relevant information that the department requires concerning the business and operations of each location in this state where the mortgage licensee conducts business in this state during the preceding calendar year. The mortgage licensee shall make the report under oath or on affirmation. The content and form of the report shall be established by the department by regulation.

(b) A mortgage licensee who fails to file a report as required by this section is subject to a civil penalty of \$25 for each day's failure to file the report.

**Sec. 06.60.105. Biennial license fee.** (a) Except as provided by (d) of this section, a licensee shall pay the department a biennial license fee of \$500.

(b) After payment of the initial biennial license fee under AS 06.60.035, a licensee shall pay the biennial license fee every two years on or before the anniversary date of the original issuance of the license, subject to renewal by the department.

(c) A mortgage licensee who is licensed to act as both a mortgage broker and a mortgage lender is not required to pay more than one biennial license fee.

(d) An originator licensee is not required to pay a biennial license fee if the licensee holds a mortgage license and an originator license, is the principal owner or legally authorized manager of the mortgage licensee, and was designated in the application under AS 06.60.020(4) as the individual to receive an originator license for the mortgage licensee.

(e) The license fee imposed by (a) of this section is in addition to the fee imposed under AS 43.70 (Alaska Business License Act).

**Sec. 06.60.110. Location of business.** A mortgage licensee may not maintain the mortgage licensee's principal place of business or a branch office within an office, suite, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with another business, unless the name, ownership, and business purpose of the other business is disclosed in the mortgage licensee's application for a mortgage license.

**Sec. 06.60.115. Change of place of business.** If a mortgage licensee wishes to change the mortgage licensee's place of business to another location, the mortgage licensee shall submit a written notice to the department at least 10 days before relocating the business. If the mortgage licensee is otherwise in compliance with this chapter, the department shall issue a revised mortgage license to the mortgage licensee that reflects the new location.

**Sec. 06.60.120. Transfer of business.** A mortgage licensee may only transfer or assign the licensee's business if

- (1) an application is made to the department to transfer or assign the business to another mortgage licensee with the same type of mortgage license as the transferring or assigning mortgage licensee;
- (2) at least 30 days before the effective date of the proposed transfer or assignment, the department determines it has received a complete application from the proposed assignee or transferee; and
- (3) the department determines that the proposed transferee or assignee complies with AS 06.60.060.

**Sec. 06.60.130. Change in business control or business operations.** (a) The prior written approval of the department is required for the continued operation of a mortgage licensee's business when a change in control of the mortgage licensee is proposed. The department may require the information it considers necessary to determine whether a new application is required. The mortgage licensee requesting approval of the change in control shall pay all reasonable expenses incurred by the department to investigate and approve or deny the change in control.

(b) If there is a material change in the business operations of a mortgage licensee not covered by AS 06.60.120, the mortgage licensee shall provide written notice to the department at least 30 days before the effective date of the change in business operations.

**Sec. 06.60.135. Records of mortgage licensee.** (a) The requirements of this section apply to the business transactions of a mortgage licensee that occur entirely or partially in this state.

(b) A mortgage licensee shall keep and use in the mortgage licensee's business the accounting records that are in accord with generally accepted accounting principles.

(c) A mortgage licensee shall maintain a record of the account of each borrower and for each mortgage loan or mortgage loan application that is related to the purchase or refinancing of an existing mortgage loan. This record must contain all documents, work papers, electronic correspondence, and forms that are produced or prepared for the mortgage loan by the mortgage licensee, and the mortgage licensee shall retain each document, work paper, electronic correspondence, and form for 36 months from the date they were created.

(d) A mortgage licensee shall retain for at least three years after final payment is made on a mortgage loan, or three years after a mortgage loan is sold, whichever occurs first, the original contract for the mortgage licensee's compensation, copies of the note, settlement statement, and truth-in-lending disclosure, an account of fees received in connection with the loan, and other papers or records relating to the loan that may be required by department order or regulation.

(e) If a mortgage licensee conducts business as a mortgage loan servicing agent for mortgage loans that the mortgage licensee owns, or as an agent for other mortgage lenders or investors, the mortgage licensee shall, in addition to complying with (b) and (c) of this section, maintain a record for each mortgage loan. The record of each mortgage loan must include the amount of the mortgage loan, the total amount of interest and finance charges on the mortgage loan, the interest rate on the mortgage loan, the amount of each payment to be made on the mortgage loan, a description of the collateral taken for the mortgage loan, a history of all payments received by the mortgage licensee on the mortgage loan, a detailed history of the amount of each payment that is applied to the reduction of the mortgage loan principal, the interest that accrues on the mortgage loan, and any other fees and charges that are related to the mortgage loan, as well as other papers required by law, department order, or regulation. The mortgage licensee shall retain the record required by this subsection for three years after the loan is sold to another mortgage loan servicing agent or after the mortgage loan is satisfied, whichever occurs first.

(f) In this section, "mortgage loan servicing agent" means a person who acts on behalf of the owner of a mortgage loan to collect payments on the mortgage loan and enforce the terms of the mortgage loan.

**Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee who operates an office or other place of business outside this state shall, at the request of the department,

(1) make the records of the office or place of business available to the department at a location within this state; or

(2) reimburse the department its reasonable costs, as provided in AS 06.60.250(f), that are incurred by the department in conjunction with an investigation or examination conducted at the office or place of business.

**Sec. 06.60.145. Disqualified persons.** (a) A disqualified person may not be an officer, a director, a partner, a member, a sole proprietor, a trustee, or an employee of a mortgage licensee or hold another position with similar responsibilities with the organization of a mortgage licensee. In this subsection, "employee" means an individual who negotiates an agreement with a member of the public for the mortgage licensee or who has access to, or responsibility for, escrow accounts or escrow money held by the mortgage licensee.

(b) A mortgage licensee may not permit a disqualified person to obtain an ownership interest in a mortgage licensee's business without the prior written approval of the department.

(c) Before a person may obtain an ownership interest in a mortgage licensee's business, the person shall authorize the department to access the person's criminal history information in any state or federal court to determine whether the person is a disqualified person.

(d) In this section,

(1) "disqualified person" means a person who is not a licensee;

(2) "ownership interest" means an ownership interest of

(A) 10 percent or more, if the mortgage licensee is a corporation with fewer than 75 shareholders;

(B) more than 50 percent, if the mortgage licensee is a corporation with 75 or more shareholders or a limited liability company.

**Sec. 06.60.150. Posting of license.** A mortgage licensee shall conspicuously post the mortgage license in each place of business of the mortgage licensee in the state.

**Sec. 06.60.155. Restriction on originator licensee work.** An originator licensee may only work as an originator licensee under contract for, or as an employee of, one mortgage licensee.

**Sec. 06.60.157. Mortgage licensee restrictions on performance of originator activities.** A mortgage licensee may not perform originator activities except through a licensed originator who is an employee of or under exclusive contract with a mortgage licensee.

**Sec. 06.60.159. Mortgage licensee employment of, contract with, and liability for originator.** (a) A mortgage licensee may not employ or enter into a contract with a person who acts as an originator for the mortgage licensee unless the person has an originator license.

(b) A mortgage licensee is liable for the conduct of a person acting as an originator if the mortgage licensee knows or should have known that the person's conduct violates this chapter and the person is employed by or is under contract with the mortgage licensee to act as an originator.

**Sec. 06.60.160. Continuing education requirements.** (a) An originator licensee shall complete and submit to the department evidence of at least 24 hours of continuing education for each biennial license period. The originator licensee or mortgage licensee shall submit the evidence when the originator licensee or mortgage licensee submits a license renewal application or an application for reactivation under AS 06.60.095. The 24 hours of continuing education must be in training programs approved by the department.

(b) The department shall establish an education committee consisting of seven members. The commissioner of commerce, community, and economic development shall appoint two persons employed by the department and five licensees to serve on the committee. A licensee may apply to the department to serve on the education committee established under this subsection by submitting an application in the form and with the content established by the department.

(c) The department may consider the recommendations of the education committee when determining which training programs to approve for the continuing education requirements.

(d) The department shall publish on a regular basis a listing of training programs that may be used to satisfy the continuing education requirements of this section.

#### **ARTICLE 4. DISCIPLINE AND INVESTIGATION.**

**Section**

- 200. Discipline action**
- 210. Suspension or revocation related to fund**
- 230. Divestment**
- 240. Reinstatement**
- 250. Investigation and examination**
- 260. Revocation, removal, or suspension of originator licensee**
- 270. Removal by entity**
- 280. Department list**

**Sec. 06.60.200. Disciplinary action.** (a) In addition to any other disciplinary action allowed under this chapter, the department may suspend or revoke a license or a registration under AS 06.60.017 or take other disciplinary action against a licensee or small mortgage lender, including action under AS 06.01 or a regulation adopted under this chapter or AS 06.01, if the department finds that

- (1) the licensee failed to
    - (A) make a payment required by this chapter;
    - (B) maintain a bond required under AS 06.60.045, if the licensee is a mortgage licensee;
    - (C) satisfy the continuing education requirements, if the licensee is an originator licensee;
    - (D) comply with an applicable provision of this title, with an applicable regulation adopted under this title, with a lawful demand, ruling, order, or requirement of the department, or with another statute or regulation applicable to the conduct of the licensee's business;
  - (2) the small mortgage lender has violated a provision of this chapter applicable to the small mortgage lender;
  - (3) the licensee or small mortgage lender has, with respect to a mortgage loan transaction,
    - (A) made a material misrepresentation;
    - (B) made a false promise;
    - (C) engaged in a serious course of misrepresentation or made a false promise through another licensee or small mortgage lender;
    - (D) engaged in conduct that is fraudulent or dishonest;
    - (E) procured, or helped another person to procure, a license or a registration under AS 06.60.017 by deceiving the department;
    - (F) engaged in conduct of which the department did not have knowledge when the department issued the license or the registration under AS 06.60.017, if the conduct demonstrates that the licensee or small mortgage lender is not fit to engage in the activities for which the licensee was licensed or small mortgage lender was registered;
    - (G) authorized, directed, planned, or aided in the publishing, distribution, or circulation of a materially false statement or a material misrepresentation concerning the licensee's business or the small mortgage lender's business or concerning mortgage loans originated in the course of the licensee's business or the small mortgage lender's business in this or another state; or
  - (4) a fact or condition exists that would have constituted grounds for denial of the initial issuance or the renewal of the license or the registration under AS 06.60.017.
- (b) In addition to the bases for disciplinary action under (a) of this section, the department may revoke the license of a licensee or the registration of a small mortgage lender who is convicted, including conviction by a plea of not guilty, no contest, or nolo contendere, of a felony or misdemeanor involving fraud, misrepresentation, or dishonesty committed while licensed under this chapter or registered under AS 06.60.017. A person whose license or registration under AS 06.60.017 is revoked under this subsection is not qualified to receive a new license or another registration under AS 06.60.017 until the person provides proof acceptable to the department that the person has been unconditionally discharged from the conviction. In this subsection, "unconditional discharge" has the meaning given in AS 12.55.185.
- (c) A disciplinary action under this section may be taken by itself or in conjunction with one or more other disciplinary actions under this chapter.

**Sec. 06.60.210. Suspension or revocation related to fund.** (a) When an award is made from the fund, the department may suspend or revoke the license of the originator licensee whose actions formed the basis of the award.

(b) The department shall lift a suspension made under (a) of this section if the originator licensee reaches an agreement with the department on terms and conditions for the repayment to the fund of the money awarded to the claimant and the costs of hearing the fund claim. The department may reimpose the suspension if the originator licensee violates the terms of a repayment agreement entered into under this subsection.

**Sec. 06.60.230. Divestment.** If the department revokes a mortgage license or a registration of a small mortgage lender, the mortgage licensee or the small mortgage lender shall divest itself of all outstanding loans that were issued under this chapter by selling or assigning them to another mortgage licensee or small mortgage lender. Divestment under this section must be approved by the department.

**Sec. 06.60.240. Reinstatement.** The department may reinstate a revoked license or registration under AS 06.60.017 if the licensee or small mortgage lender complies with this chapter or with a demand, ruling, or requirement made by the department under this chapter. Before reinstatement of a license or registration under AS 06.60.017, the licensee or small mortgage lender shall pay any fees, restitution, and civil penalties owing under this chapter.

**Sec. 06.60.250. Investigation and examination.** (a) The department may investigate and examine the affairs, business premises, and records of a person required to be licensed under this chapter or a small mortgage lender to determine compliance with this chapter, AS 06.01, and applicable regulations adopted under AS 06.01 or this chapter. Notwithstanding AS 06.01.015, the department may conduct an examination every 36 months. The

department may conduct an examination more often if the examination is part of the review of a complaint or other information received by the department concerning the licensee or small mortgage lender.

(b) For the purposes of conducting an examination under this section, the department

(1) shall have free access to the place of business, books, accounts, safes, and vaults of the licensee or small mortgage lender to examine and make copies as necessary;

(2) may conduct the examination without prior notice to the licensee or small mortgage lender; and

(3) may examine, under oath or affirmation, all persons whose testimony the department may require to conduct the examination.

(c) For the purpose of hearings, investigations, or other proceedings under this chapter and except as otherwise provided in this chapter, the department or an officer designated by the department may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the department considers relevant or material to the matter.

(d) If a person refuses to comply with a subpoena, the superior court, on application by the department, may issue to the person an order requiring the person to appear before the department to produce documentary evidence or to give evidence touching the matter under investigation or in question.

(e) The department may share information received or collected during an examination, investigation, or other proceeding with other law enforcement agencies.

(f) A person shall reimburse the department for reasonable costs incurred by the department to conduct an examination under this section. The reimbursement under this subsection may not exceed the rate of \$75 an hour for the examination, plus travel costs, including a per diem allowance that does not exceed the per diem allowance for employees of the state under AS 39.20.110.

**Sec. 06.60.260. Revocation, removal, or suspension of originator licensee.** If the department finds that an originator licensee is dishonest, reckless, or incompetent when operating as an originator or fails to comply with applicable law, with regulations or orders of the department, or with written requirements or instructions of the department relating to the originator license, the department may revoke or suspend the originator license, remove the originator licensee from operating as an originator in the state, or order a person licensed under this title to remove the originator licensee from operating as an originator for the person.

**Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove an originator licensee from acting as an originator for the mortgage licensee if the department directs the mortgage licensee to remove the originator licensee under AS 06.60.260.

**Sec. 06.60.280. Department list.** The department shall make available to the public a list of all licensees who have been censured or barred or had their licenses suspended or revoked under this chapter. The department shall update the list on a monthly basis.

## ARTICLE 5. BUSINESS DUTIES AND RESTRICTIONS.

### Section

**320. False, misleading, or deceptive advertising prohibited**

**330. Compliance with federal requirements**

**340. Prohibited activities**

**350. Certain refinancing prohibited**

**360. Escrow accounts**

**370. Criminal liability of licensee or small mortgage lender**

**380. Definition of "covered person"**

**Sec. 06.60.320. False, misleading, or deceptive advertising prohibited.** A person, including a small mortgage lender, may not advertise, print, display, publish, distribute, broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner a statement or representation with regard to the rates, terms, or conditions for a mortgage loan that is false, misleading, or deceptive.

**Sec. 06.60.330. Compliance with federal requirements.** A person, including a small mortgage lender, subject to this chapter shall conduct the person's mortgage loan activities in compliance with 12 CFR Part 226 and other regulations adopted by the federal government under

(1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of 1974);

(2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

(3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

(4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit Protection Act);

(5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

- (6) any other federal law or regulation.

**Sec. 06.60.340. Prohibited activities.** In addition to activities prohibited elsewhere in this chapter or by law, a person who is a licensee, a person who is required to be licensed under this chapter, a person who is a small mortgage lender, and a person who is licensed under AS 06.20 may not misrepresent or conceal material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to enter into a mortgage loan transaction, or, in the course of a mortgage loan transaction,

- (1) pursue a course of misrepresentation through an agent;
- (2) improperly refuse to issue a satisfaction of a mortgage loan;
- (3) fail to account for or deliver to a person money, a document, or another thing of value obtained in connection with a mortgage loan, including money provided for a real estate appraisal or a credit report if the person is not entitled to retain the money under the circumstances;
- (4) pay, receive, or collect, in whole or in part, a commission, fee, or other compensation for brokering a mortgage loan in violation of this chapter, including a mortgage loan brokered by an unlicensed person other than an exempt person under AS 06.60.015;
- (5) fail to disburse money in accordance with a written commitment or agreement to make a mortgage loan;
- (6) engage in a transaction, practice, or course of business that is not engaged in by the person in good faith or fair dealing or that constitutes a fraud on a person in connection with the brokering, making, purchase, or sale of a mortgage loan;
- (7) influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan; this paragraph does not prohibit a person from asking an appraiser to
  - (A) consider additional appropriate property information;
  - (B) provide further detail, substantiation, or explanation for the appraiser's value determination; or
  - (C) correct errors in the appraisal report;
- (8) in a loan commitment or prequalification letter, make a false or misleading statement, or omit relevant information or conditions that the person knew or reasonably should have known from a preliminary examination of the borrower's loan application, credit report, assets, and income, except that this paragraph does not apply if the borrower made a false or misleading statement or omitted relevant information in the loan application that the person relied on when issuing the loan commitment or prequalification letter;
- (9) engage in a practice or course of business in which the ultimate rates, terms, or costs of mortgage loans are materially worse for the borrowers than they are represented to be in the first good faith estimates the person provides to the borrowers; this paragraph does not apply if
  - (A) the person's generally published or advertised rates, terms, or costs, if any, change for a borrower's loan program; or
  - (B) new or changed information from the borrower makes it necessary to change the loan program offered to the borrower;
- (10) represent that the person has a license, registration, title, certification, sponsorship, approval, status, affiliation, or connection that the person does not have;
- (11) engage in unfair, deceptive, or fraudulent mortgage loan practices or advertising.

**Sec. 06.60.350. Certain refinancing prohibited.** (a) A covered person may not refinance a mortgage loan within 12 months after the date the mortgage loan is closed unless the refinancing is beneficial to the borrower.

(b) The factors to be considered when determining if refinancing is beneficial to the borrower under this section may include whether

- (1) the borrower's new monthly payment is lower than the total of all monthly obligations being refinanced, after taking into account the costs and fees of the refinancing;
- (2) the amortization period of the new mortgage loan is different from the amortization period of the mortgage loan being refinanced;
- (3) the borrower receives cash in excess of the costs and fees of the refinancing;
- (4) the rate of interest of the borrower's promissory note is reduced;
- (5) the mortgage loan changes from an adjustable rate loan to a fixed rate loan; in a determination under this paragraph, the department may take into account costs and fees;
- (6) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction;
- (7) the original term of the mortgage loan being refinanced is two years or less; and
- (8) the refinancing is being made to prevent a foreclosure on an existing mortgage loan.

**Sec. 06.60.360. Escrow accounts.** (a) A covered person and a borrower may agree that the covered person will keep in an escrow account all money that the borrower is required to pay to defray future taxes or insurance premiums or for other lawful purposes. The escrow account must be segregated from the other accounts of the covered person and be subject to a written escrow agreement. The covered person may not commingle the borrower's money with the general funds of the covered person. Money deposited in an escrow account under this subsection shall be maintained in the account until it is disbursed in accordance with the written escrow agreement.

(b) A covered person may not require a borrower to pay money into escrow to defray future taxes, to defray insurance premiums, or for another purpose, in connection with a subordinate mortgage loan, unless an escrow account for that purpose is not being maintained for the mortgage loan that is superior to the subordinate mortgage loan.

(c) If the billing address of a covered person who is holding money in escrow for insurance premiums changes, the covered person shall notify the insurer in writing about the change of billing address within 30 days after the change or 60 days before the renewal date of the insurance policy, whichever is later.

(d) A covered person who accepts money belonging to a borrower in connection with a mortgage loan shall deposit all of the money into an escrow account maintained by the covered person in a bank or another recognized depository institution. In this subsection, "recognized depository institution" means a person who is organized as a financial institution under the laws of a state or the federal government and whose deposits are insured by a federal agency.

(e) Money held in an escrow account under this section is exempt from execution, attachment, or garnishment under AS 09.38 and is not subject to a claim under AS 09.38.065.

**Sec. 06.60.370. Criminal liability of licensee or small mortgage lender.** (a) The department may report violations of (b) - (e) of this section to the attorney general, who may institute the proper proceedings to enforce the criminal penalties provided in (b) - (e) of this section.

(b) A person, including a small mortgage lender, who knowingly provides false or misleading information to the department that is material under this chapter is guilty of a class A misdemeanor.

(c) A licensee, person who is a small mortgage lender, or person who is exempt under AS 06.60.015 who knowingly fails to account for or deliver to a person money, deposits, or checks or other forms of negotiable instruments in violation of the provisions of this chapter is guilty of a class A misdemeanor.

(d) A licensee or a small mortgage lender who knowingly fails to disburse money belonging to the borrower without just cause is guilty of a class A misdemeanor.

(e) A mortgage lender, mortgage broker, or originator who knowingly operates without a license or without being registered under AS 06.60.017 and is not exempt under AS 06.60.015 is guilty of a class A misdemeanor.

**Sec. 06.60.380. Definition of "covered person."** In AS 06.60.320 - 06.60.380, "covered person" means a mortgage licensee or a person who is licensed under AS 06.20.

## **ARTICLE 6. ENFORCEMENT.**

### **Section**

**400. Cease and desist orders**

**410. Censure, suspension, or bar**

**420. Civil penalty for violations**

**430. Additional enforcement provisions, actions, and rights**

**440. Definition**

**Sec. 06.60.400. Cease and desist orders.** The department may issue, under AS 06.01.030, an order directing a person, including a small mortgage lender, to cease and desist.

**Sec. 06.60.410. Censure, suspension, or bar.** (a) In addition to any other remedy provided under this chapter, the department may, by order after appropriate notice and opportunity for a hearing, censure a person, suspend the license of a person for a period not to exceed 12 months, suspend the registration of a small mortgage lender for a period not to exceed 12 months, or bar a person from a position of employment, management, or control of a licensee or a small mortgage lender if the department finds that

(1) the censure, suspension, or bar is in the public interest;

(2) the person has knowingly committed or caused a violation of this chapter or a regulation adopted under this chapter; and

(3) the violation has caused material damage to the licensee, to the small mortgage lender, or to the public.

(b) When a person who is the subject of a proposed order under this section receives a notice of the department's intention to issue an order under this section, the person is immediately prohibited from engaging in any activities for which a license or registration as a small mortgage lender is required under this chapter.

(c) A person who is suspended or barred under this section is prohibited from participating in a business activity of a licensee or a small mortgage lender and from engaging in a business activity on the premises where a licensee or small mortgage lender is conducting the licensee's or small mortgage lender's business. This subsection may not be construed to prohibit a suspended or barred person from having the person's personal transactions processed by a licensee or a small mortgage lender.

**Sec. 06.60.420. Civil penalty for violations.** (a) A person, including a small mortgage lender, who violates a provision of this chapter or a regulation adopted under this chapter is liable for a civil penalty not to exceed \$10,000 for each violation.

(b) The remedies provided by this section and by other sections of this chapter are not exclusive and may be applied in combination with other remedies to enforce the provisions of this chapter.

**Sec. 06.60.430. Additional enforcement provisions, actions, and rights.** (a) The department may treat a licensee or a small mortgage lender as a financial institution under AS 06.01 when applying the enforcement provisions of AS 06.01.

(b) This chapter may not be interpreted to prevent the attorney general or any other person from exercising the rights provided under AS 45.50.471 - 45.50.561.

(c) If the department determines that a licensee, a small mortgage lender, or a person acting on behalf of the licensee or small mortgage lender is in violation of, or has violated, a provision of this chapter, the department may refer the information to the attorney general and request that the attorney general investigate the violation under AS 45.50.495. The attorney general may enjoin a violation of this chapter and may seek restitution, rescission, and other relief as allowed by law.

(d) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.

**Sec. 06.60.440. Definition.** In AS 06.60.400 - 06.60.440, "small mortgage lender" includes a natural person who is an employee of or working under exclusive contract for a small mortgage lender.

## ARTICLE 7. ORIGINATOR SURETY FUND.

### Section

- 500. Originator surety fund
- 510. Composition of fund
- 520. Use of fund
- 530. Fund report
- 540. Approval required
- 550. Required fund fees
- 560. Claim for reimbursement
- 570. Submission of fund claim
- 580. Form and contents of fund claim
- 590. Claim hearing
- 600. Filing and distribution of claim
- 610. Election to use small claims court
- 620. Filing fee
- 630. Department contracts
- 640. Defense of claim
- 650. Standard of proof
- 660. Postponement
- 670. Nonapplication
- 680. Findings and payment
- 690. Fund operations
- 700. Payment of small claims judgment
- 710. Maximum liability
- 720. Order of fund claim payment
- 730. False claims or documents
- 740. Right to subrogation
- 745. Reimbursement for expenses
- 750. Disciplinary action against an originator licensee

**Sec. 06.60.500. Originator surety fund.** The originator surety fund is established as a separate account in the general fund.

**Sec. 06.60.510. Composition of fund.** The fund consists of payments made by originator licensees under AS 06.60.550, filing fees retained under AS 06.60.620, income earned on the investment of the money in the fund, and money deposited in the fund by the department under AS 06.60.740.

**Sec. 06.60.520. Use of fund.** The legislature may appropriate the money collected in the fund under AS 06.60.510 to the department to implement AS 06.60.500 - 06.60.750, including paying claims, holding hearings, and incurring legal expenses and other expenses directly related to fund claims and the operation of the fund. Nothing in AS 06.60.500 - 06.60.750 creates a dedicated fund.

**Sec. 06.60.530. Fund report.** Every six months, the department shall provide a written report to the director of the office of management and budget on the activities of the fund, the balances in the fund, interest earned on the fund, and interest returned to the fund.

**Sec. 06.60.540. Approval required.** (a) The department must approve a fund expenditure that is used to prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a service to a member of the public, a licensee, a potential licensee, or another person.

(b) In this section, "an item or a service" includes an information pamphlet, an examination preparation packet, an educational course, the certification of a continuing education course, and an instructor for a continuing education course.

**Sec. 06.60.550. Required fund fees.** (a) A person who applies for or renews an originator license shall pay to the department, in addition to the fees required by AS 06.60.035, a fund fee not to exceed \$150.

(b) Every two years, if the department determines that the average balance in the fund during the previous two years was less than \$250,000 or more than \$500,000, the department shall, unless the department waives the adjustment, adjust the fund fee so that the average balance of the fund during the next two years is anticipated to be an amount that is not less than \$250,000 or more than \$500,000. In this subsection, "average balance" means the average balance in the fund after the department deducts anticipated expenditures for claims against the fund and for hearing and legal expenses directly related to fund operations and claims.

(c) At least once a month, the department shall pay the fees collected under this section into the general fund. These payments shall be credited to the fund.

(d) Notwithstanding (a) of this section, an originator licensee who obtains an initial originator license when the department has reduced the fund fee to nothing shall nonetheless pay a fund fee of \$150 to the department for the first year of the originator license or, for a mortgage licensee, of operating as an originator.

**Sec. 06.60.560. Claim for reimbursement.** In addition to any other remedies available to the person, a person may seek reimbursement for a loss suffered in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by an originator licensee and is eligible to be reimbursed under AS 06.60.500 - 06.60.750 for the loss from money appropriated for that purpose.

**Sec. 06.60.570. Submission of fund claim.** To seek reimbursement under AS 06.60.560, a person shall submit a fund claim to the department for the reimbursement on a form furnished by the department. The person must file the fund claim within two years after the occurrence of the fraud, misrepresentation, deceit, or conversion that is claimed as the basis for the reimbursement.

**Sec. 06.60.580. Form and contents of fund claim.** The form for a fund claim shall be executed under penalty of unsworn falsification and must include

- (1) the name and address of each originator licensee involved;
- (2) the amount of the alleged loss;
- (3) the date or period of time during which the alleged loss occurred;
- (4) the date when the alleged loss was discovered;
- (5) the name and address of the claimant; and
- (6) a general statement of the facts related to the fund claim.

**Sec. 06.60.590. Claim hearing.** Except as otherwise provided by AS 06.60.610, a hearing on a fund claim shall be handled by the office of administrative hearings (AS 44.64.010).

**Sec. 06.60.600. Filing and distribution of claim.** At least 20 days before a hearing is held on the fund claim by the office of administrative hearings (AS 44.64.010), the department shall send a copy of the claim filed with the department to

- (1) each originator licensee alleged to have committed the misconduct resulting in the alleged loss;
- (2) the employer of the originator licensee described in (1) of this section; and
- (3) any other parties involved in the mortgage loan transaction that is the subject of the fund claim.

**Sec. 06.60.610. Election to use small claims court.** (a) Within seven days after receiving a copy of a fund claim under AS 06.60.600, each originator licensee against whom the claim is made may elect to defend the fund claim as a small claims action in district court under District Court Rules of Civil Procedure if the claim does not exceed the small claims jurisdictional limit.

(b) An originator licensee who elects under (a) of this section to defend a fund claim in district court under the small claims rules may not revoke the election without the consent of the person who filed the fund claim.

(c) On receipt of a valid written election under (a) of this section, the department shall dismiss the fund claim filed with the department and notify the person who filed the fund claim that the person who filed the fund claim must bring a small claims action in the appropriate district court.

**Sec. 06.60.620. Filing fee.** (a) A person who files a fund claim under AS 06.60.570 shall pay the department a filing fee of \$250 when the person files the fund claim.

(b) The department shall refund the filing fee required under this section if the

(1) department makes an award to the claimant;

(2) fund claim is dismissed under AS 06.60.610; or

(3) fund claim is withdrawn by the claimant before the office of administrative hearings (AS 44.64.010) holds a hearing on the fund claim.

**Sec. 06.60.630. Department contracts.** When the department receives a fund claim, the department may contract under AS 36.30 (State Procurement Code) with an investigator, an accountant, an attorney, or another person necessary for the department to process the fund claim. A contract may cover more than one fund claim.

**Sec. 06.60.640. Defense of claim.** When the department receives a fund claim, the department shall allow each originator licensee against whom the claim is made an opportunity to file with the department, within seven days after receipt of notification of the fund claim under AS 06.60.600, a written statement in opposition to the fund claim and a request for a hearing.

**Sec. 06.60.650. Standard of proof.** A person who submits a fund claim under AS 06.60.570 bears the burden of establishing by a preponderance of the evidence that the person suffered a loss in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds by an originator licensee and the extent of those losses.

**Sec. 06.60.660. Postponement.** The department may postpone its consideration of a fund claim until after a hearing under AS 06.60.200 or 06.60.590 or until the completion of a pending court proceeding.

**Sec. 06.60.670. Nonapplication.** AS 06.60.630 - 06.60.660 do not apply to a fund claim that is dismissed under AS 06.60.610.

**Sec. 06.60.680. Findings and payment.** (a) At the conclusion of the department's consideration of a claim made under AS 06.60.570, the department shall issue a written report that provides the department's findings of fact and conclusions of law.

(b) If the department determines that the claimant has suffered a loss in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by an originator licensee, the department may award the person who filed the fund claim reimbursement from money appropriated to the fund.

**Sec. 06.60.690. Fund operations.** The department shall deposit into the fund money that the department recovers from an originator licensee under AS 06.60.745. The department may not consider amounts paid from the fund for hearing or legal expenses when determining the maximum reimbursement to be awarded under AS 06.60.710 or the maximum liability for fund claims under AS 06.60.710.

**Sec. 06.60.700. Payment of small claims judgment.** (a) If a fund claim dismissed under AS 06.60.610 results in a monetary award against an originator licensee, the department may pay, subject to AS 06.60.710 and 06.60.720, any outstanding portion of the small claims judgment from money appropriated to the department for the purpose.

(b) Before making payment under (a) of this section, the person who received the award shall file with the department a copy of the final judgment and an affidavit stating that more than 30 days have elapsed since the judgment became final and that the judgment has not yet been satisfied by the originator licensee against whom the award was made.

(c) After the department pays a small claims judgment under this section, the department is subrogated to the rights of the person to whom the money was awarded under the judgment.

**Sec. 06.60.710. Maximum liability.** (a) Payment of a fund claim may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan transaction regardless of the number of persons injured or the number of pieces of residential property involved in the mortgage loan transaction.

(b) The maximum liability for fund claims against one originator licensee may not exceed \$50,000.

(c) If the \$50,000 liability under (b) of this section is insufficient to pay in full the valid fund claims of all persons who have filed fund claims against one originator licensee, the \$50,000 shall be distributed among the claimants in the ratio that their individual fund claims bear to the aggregate of valid fund claims against that

originator licensee. The department shall distribute the money among the persons entitled to share in the recovery without regard to the order in which their fund claims were filed.

**Sec. 06.60.720. Order of fund claim payment.** If the money appropriated to the department for payment under AS 06.60.520 - 06.60.750 is insufficient to satisfy an award under AS 06.60.680 for a fund claim, the department shall, when sufficient money has been appropriated to the department for the purpose, satisfy unpaid fund claims in the order the fund claims were originally filed, plus accumulated interest at the rate allowed under AS 45.45.010(a).

**Sec. 06.60.730. False claims or documents.** A person who files a notice, statement, or other document under AS 06.60.500 - 06.60.750 that contains a material misstatement of fact is guilty of a class A misdemeanor.

**Sec. 06.60.740. Right to subrogation.** When the department has paid to a claimant the sum awarded under AS 06.60.680 or 06.60.700 and any amount due under AS 06.60.720, the department shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the department. Money collected by the department on the claim shall be deposited in the fund.

**Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a portion of a fund claim against an originator licensee under AS 06.60.680 or 06.60.700, the department may recover from the originator licensee, in addition to the payment of the fund claim, the expenses incurred by the department to process and otherwise handle the fund claim.

**Sec. 06.60.750. Disciplinary action against an originator licensee.** Repayment in full of all obligations to the fund does not nullify or modify the effect of disciplinary proceedings brought against an originator licensee under this chapter.

## ARTICLE 8. PROGRAM ADMINISTRATION FEE.

### Section

**800. Authorization of program administration fee**

**810. Payment and use of fees**

**Sec. 06.60.800. Authorization of program administration fee.** (a) The department may collect a program administration fee of \$10 for each mortgage loan transaction to reimburse the state for the cost of administering this chapter.

(b) The program administration fee shall be paid by a borrower who is providing real property as security for the mortgage loan, except that, if the regulations of a federal or state loan program that insures the loan and that applies to the mortgage loan transaction prohibits the borrower from paying the program administration fee, another party to the mortgage loan transaction shall pay the program administration fee.

(c) If there are multiple mortgage loan instruments recorded for a single mortgage loan transaction, the department shall collect only one program administration fee.

(d) In this section, "mortgage loan instrument" means a deed of trust, mortgage, or another loan instrument recorded to encumber residential real property in the state.

**Sec. 06.60.810. Payment and use of fees.** (a) The department shall coordinate with the Department of Natural Resources to collect the program administration fee.

(b) The program administration fee shall be charged when payment is made to the Department of Natural Resources for recording a document under AS 44.37.025.

(c) The program administration fees collected under (b) of this section shall be separately accounted for and may be appropriated by the legislature to the department for the operation of this chapter.

## ARTICLE 9. DUTIES AND POWERS OF THE DEPARTMENT.

### Section

**850. Publication of disciplinary action**

**860. Authority of department**

**Sec. 06.60.850. Publication of disciplinary action.** The department may release for publication in a newspaper of general circulation in the locale of a licensee's principal office notice of disciplinary action taken by the department against the licensee.

**Sec. 06.60.860. Authority of department.** The department may make a ruling, demand, or finding that the department determines is necessary for the proper conduct of a licensee's business regulated by this chapter or for the enforcement of this chapter, including an order for the payment of restitution. The ruling, demand, or finding must be consistent with this chapter.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS.**

### **Section**

- 890. Application to Internet activities**
- 895. Effect of revocation, suspension, or surrender of license**
- 900. Applicability of administrative procedures**
- 905. Untrue, misleading, or false statements**
- 910. Regulations**
- 920. Relationship to federal and other state law**

**Sec. 06.60.890. Application to Internet activities.** This chapter applies to a person, including a small mortgage lender to the extent this chapter applies to a small mortgage lender, even if the person is engaging in the activities regulated by this chapter by using an Internet website from within or outside the state.

**Sec. 06.60.895. Effect of revocation, suspension, or surrender of license.** The revocation, suspension, or surrender of a license does not impair or otherwise affect the rights or obligations of a preexisting lawful contract between the licensee and a borrower.

**Sec. 06.60.900. Applicability of administrative procedures.** The provisions of AS 44.62 (Administrative Procedure Act) apply to an action of the department to deny, revoke, or suspend a license under this chapter, to censure, suspend, or bar a person under AS 06.60.410, to take other disciplinary action under this chapter, to hold hearings, and to issue orders.

**Sec. 06.60.905. Untrue, misleading, or false statements.** A person, including a small mortgage lender, may not, in a document filed with the department or in an examination, an investigation, a hearing, or another proceeding under this chapter, make or cause to be made an untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading or false.

**Sec. 06.60.910. Regulations.** The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

**Sec. 06.60.920. Relationship to federal and other state law.** (a) If a provision of this chapter is preempted by or conflicts with federal law in a particular situation, the provision does not apply to the extent of the preemption or conflict.

(b) If a provision of this chapter conflicts with another state law in a particular situation, the provision in this chapter governs to the extent of the conflict.

## **ARTICLE 11. GENERAL PROVISIONS.**

### **Section**

- 990. Definitions**
- 995. Short title**

**Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise requires,

- (1) "agent" does not include a person who is a state employee when acting in the capacity of a state employee;
- (2) "borrower" means an individual who receives a mortgage loan;
- (3) "broker" means to operate as a mortgage broker;
- (4) "control," except as provided in AS 06.60.065, means
  - (A) the ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests;
  - (B) the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority; or
  - (C) the power to exercise, directly or indirectly, a controlling influence over management or policies or person in control;

- (5) "department" means the Department of Commerce, Community, and Economic Development;
- (6) "escrow account" means an account
- (A) to which a borrower makes payments for obligations related to the real property that is the subject of a mortgage loan of the borrower;
- (B) held by a third person; and
- (C) from which the third person identified in (B) of this paragraph disburses money in accordance with a written agreement to pay obligations related to the real property that is the subject of a mortgage loan of the borrower;
- (7) "fund" means the originator surety fund established by AS 06.60.500;
- (8) "fund claim" means a claim authorized under AS 06.60.560;
- (9) "fund fee" means the fee that is required to be paid by AS 06.60.550;
- (10) "knowingly" has the meaning given in AS 11.81.900;
- (11) "license" means a license issued under this chapter;
- (12) "licensee" means a person who holds a license issued under this chapter;
- (13) "mortgage broker" means a person who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, by telephone, by electronic means, by mail, through the Internet, in person, or by the person itself or an originator who is an employee or under exclusive contract to the person,
- (A) arranges with a variety of lending sources, who may be private lenders, institutional investors, or wholesale lenders, to provide financing for mortgage loans; or
- (B) assists or offers to assist a borrower or potential borrower to obtain financing for mortgage loans;
- (14) "mortgage lender" means a person who consummates and funds a mortgage loan and who is named as the payee in the promissory note and as the beneficiary of the deed of trust; "mortgage lender" does not include a subsequent purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a licensee under this chapter;
- (15) "mortgage lender license" means a license issued under this chapter to operate as a mortgage lender;
- (16) "mortgage lender licensee" means a person who holds a mortgage lender license;
- (17) "mortgage license" means a mortgage lender license or a mortgage broker license;
- (18) "mortgage licensee" means a mortgage lender licensee or a mortgage broker licensee;
- (19) "mortgage loan"
- (A) means a loan made to an individual if the proceeds are to be used primarily for personal, family, or household purposes and if the loan is secured by a mortgage or deed of trust on an interest in a residential owner-occupied property for one to four family units located in the state and regardless of where the loan is made;
- (B) includes the renewal or refinancing of a loan;
- (C) does not include loans
- (i) or extensions of credit to buyers of real property for a part of the purchase price of the property by persons selling the property owned by them;
- (ii) to persons related to the lender by blood or marriage;
- (iii) to persons who are employees of the lender; or
- (iv) made primarily for a business, commercial, or agricultural purpose of the borrower or for construction of residential property;
- (20) "operate" means do business, offer to provide, or provide;
- (21) "originator"
- (A) means a natural person who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, by telephone, by electronic means, by mail, or in person,
- (i) interviews the consumer in connection with the consumer's application for a mortgage loan;
- (ii) accepts or offers to accept an application for a mortgage loan from a potential borrower;
- (iii) solicits or offers to solicit a mortgage loan for a potential borrower;
- (iv) negotiates or offers to negotiate the terms or conditions of a mortgage loan with or for a borrower or potential borrower; or
- (v) issues or offers to issue to borrowers, potential borrowers, or the representatives of borrowers or potential borrowers, mortgage loan commitments, interest rate agreements, interest rate guarantees, prequalification letters, or commitments to finance up to a stated amount of the value of real property, or 90-percent letters to finance up to a stated amount of the value of real property;
- (B) does not include employees of a mortgage licensee, or employees of a person who is exempt from licensure under AS 06.60.015, who perform clerical duties in connection with mortgage loan transactions, collect financial information and other related documents that are part of the application process, order verifications of employment, verifications of deposits, requests for mortgage payoffs, and other loan verifications, appraisals, inspections, or engineering reports, or perform the functions of a mortgage loan processor, at the direction of and subject to the supervision of the mortgage licensee, a mortgage originator, or the person exempt from licensure;
- (22) "originator license" means a license issued to a person to operate as an originator;
- (23) "originator licensee" means a person who holds an originator license;
- (24) "program administration fee" means the fee described under AS 06.60.800(a);
- (25) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(26) "residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes;

(27) "small mortgage lender" means a person registered under AS 06.60.017.

**Sec. 06.60.995. Short title.** This chapter may be known as the Mortgage Lending Regulation Act.

**CHAPTER 14.  
MORTGAGE LENDING.**

**Article**

1. **Licensing**  
(3 AAC 14.010 – 3 AAC 14.095)
2. **Registration as a Small Mortgage Lender or Small Mortgage Originator**  
(3 AAC 14.110 – 3 AAC 14.155)
3. **Originator Competency Testing and Continuing Education**  
(3 AAC 14.210 – 3 AAC 14.245)
4. **License Duration, Renewal, Inactivity, and Surrender**  
(3 AAC 14.310 – 3 AAC 14.330)
5. **Licensee Obligations**  
(3 AAC 14.410 – 3 AAC 14.450)
6. **Business Duties and Restrictions, and Disciplinary Action**  
(3 AAC 14.510 – 3 AAC 14.610)
7. **Originator Surety Fund**  
(3 AAC 14.710 – 3 AAC 14.735)
8. **General Provisions**  
(3 AAC 14.910 – 3 AAC 14.990)

**ARTICLE 1.  
LICENSING.**

**Section**

10. **Mortgage license, exemption, or registration required to operate as mortgage lender**
15. **Mortgage license or exemption required to operate as mortgage broker**
20. **Originator license, exemption, or registration required**
25. **License required for individual mortgage licensee to operate as an originator**
30. **Business from outside this state**
35. **Operating in this state**
40. **Exemptions**
45. **Biennial renewal of exemptions**
50. **Maintenance of exemption eligibility records**
55. **Application for mortgage license**
60. **Application for originator license**
65. **Reimbursement of costs and investigative expenses related to applications**
70. **Payment of fees required**
75. **Notice of complete application**
80. **Originator fee waiver**
85. **Abandoned applications**
90. **Mortgage licensee and originator licensing between July 1, 2008 and March 1, 2009**

**3 AAC 14.010. MORTGAGE LICENSE, EXEMPTION, OR REGISTRATION REQUIRED TO OPERATE AS MORTGAGE LENDER.** A person may not operate as a mortgage lender in this state unless

- (1) licensed by the department as a mortgage licensee under AS 06.60.010(a);
- (2) registered with the department as exempt or as an employee of a person registered as exempt from licensing under AS 06.60.015; or
- (3) registered with the department as a small mortgage lender under AS 06.60.017.

**Authority:** AS 06.60.010 AS 06.60.017 AS 06.60.910  
AS 06.60.015

**3 AAC 14.015. MORTGAGE LICENSE OR EXEMPTION REQUIRED TO OPERATE AS MORTGAGE BROKER.** A person may not operate as a mortgage broker in this state unless

- (1) licensed by the department as a mortgage licensee under AS 06.60.010(a); or
- (2) registered with the department as exempt or as an employee of a person registered as exempt from licensing under AS 06.60.015.

**Authority:** AS 06.60.010 AS 06.60.015 AS 06.60.910

**3 AAC 14.020. ORIGINATOR LICENSE, EXEMPTION, OR REGISTRATION REQUIRED.** A person may not operate as an originator in this state unless

(1) licensed by the department as an originator and working under exclusive contract for, or as an employee of, a mortgage licensee under AS 06.60.010(b);

(2) licensed by the department as an originator as the single designated individual under AS 06.60.020(4) approved to receive an originator license for the mortgage licensee in accordance with the requirements of AS 06.60.035(c);

(3) registered by the department under AS 06.60.017 as a small mortgage originator and working under exclusive contract for, or as an employee of, a small mortgage lender;

(4) registered as an exempt employee of a person who is registered as exempt from licensing under AS 06.60.015; or

(5) licensed by the department as an originator and working as an independent contractor for a person registered as exempt under AS 06.60.015, except that a person who qualifies as an exclusive agent under AS 06.60.015(a)(4) is exempt from licensing.

**Authority:** AS 06.60.010 AS 06.60.020 AS 06.60.910  
AS 06.60.017 AS 06.60.035

**3 AAC 14.025. LICENSE REQUIRED FOR INDIVIDUAL MORTGAGE LICENSEE TO OPERATE AS AN ORIGINATOR.** A mortgage licensee who is a natural person may also be licensed as an originator if the individual meets the requirements of AS 06.60.035(c).

**Authority:** AS 06.60.010 AS 06.60.035 AS 06.60.910

**3 AAC 14.030. BUSINESS FROM OUTSIDE THIS STATE.** A person doing business from outside this state under AS 06.60.010(a) includes a person doing business via the Internet, through the mail or a private delivery service, by telephone, or by other means of interstate communication.

**Authority:** AS 06.60.010 AS 06.60.017 AS 06.60.910

**3 AAC 14.035. OPERATING IN THIS STATE.** A person operates as a mortgage broker, mortgage lender, small mortgage lender, originator, or small mortgage originator in this state if the person communicates with a resident of this state or a person present in this state, whether in person, in writing, via the Internet, through the mail or a private delivery service, by telephone, or by other means of intrastate or interstate communication.

**Authority:** AS 06.60.010 AS 06.60.017 AS 06.60.910

**3 AAC 14.040. EXEMPTIONS.** (a) To obtain an exemption under AS 06.60.015(a), a person listed in AS 06.60.015(a)(1) - (9) must submit a registration form to the department. The department will review the eligibility of the person for the exemption based on the information provided to the department. A natural person who operates as a mortgage broker, mortgage lender, or originator and who is an employee of a person registered as exempt under AS 06.60.015 is exempt from AS 06.60, and need not submit that person's own registration form under AS 06.60.015(b), if that person is listed on the registration form of the person's employer under AS 06.60.015. A person who operates as a mortgage lender, mortgage broker, or originator and is not an employee, but works as an independent contractor for a person registered as exempt from licensing under AS 06.60.015, remains subject to AS 06.60, unless the person qualifies as an exclusive agent under AS 06.60.015(a)(4).

(b) A person is not eligible for an exemption under AS 06.60.015(a)(2) until the department has received the certification form required by AS 06.60.015(a)(2).

(c) A person is not eligible for an exemption as an exclusive agent under AS 06.60.015(a)(4) until the department has received the written determination required by AS 06.60.015(a)(4).

**Authority:** AS 06.60.010 AS 06.60.017 AS 06.60.910  
AS 06.60.015

**3 AAC 14.045. BIENNIAL RENEWAL OF EXEMPTIONS.** An exemption issued under AS 06.60.015(a) expires two years after its issuance by the department. To renew the exemption, a person listed in AS 06.60.015(a)(1) - (9) must submit, at least 30 days before the exemption's expiration date, a complete registration form for the renewal of the exemption.

**Authority:** AS 06.60.015 AS 06.60.017 AS 06.60.910

**3 AAC 14.050. MAINTENANCE OF EXEMPTION ELIGIBILITY RECORDS.** A person claiming an exemption under AS 06.60.015 shall continuously maintain evidence of eligibility for the exemption and shall provide evidence of continuing eligibility upon request by the department.

**Authority:** AS 06.60.015 AS 06.60.910

**3 AAC 14.055. APPLICATION FOR MORTGAGE LICENSE.** To apply for a mortgage license under AS 06.60.020, a person must submit

- (1) a complete application on a form established by the department;
- (2) a copy of the applicant's current business license issued under AS 43.70;
- (3) a financial statement prepared within 12 months before the date the department receives the application;
- (4) a complete set of fingerprints, upon the department's request and in a form acceptable to the Department of Public Safety, of the applicant and of the directors, officers, members, owners, and other principals of the applicant in order for the department to comply with AS 06.60.060(3) and 06.60.065(3)(B); however, the department will not request fingerprints from all owners or principals if the number of owners or principals is so large that the request would pose an undue burden in light of the limited impact that any single owner or principal would have on the operations of the business;
- (5) a designation of the sole natural person to obtain the originator license under AS 06.60.020(4) and 06.60.035(c), if the applicant seeks that originator license and meets the requirements of AS 06.60.035(c); and
- (6) other information, documentation, and payments as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.020 AS 06.60.060 AS 06.60.910  
AS 06.60.035 AS 06.60.065

**3 AAC 14.060. APPLICATION FOR ORIGINATOR LICENSE.** To apply for an originator license under AS 06.60.025, a person must submit

- (1) a complete application on a form established by the department;
- (2) identification of the mortgage licensee for whom the applicant will provide originator services and a copy of that mortgage licensee's mortgage license or other authorization from the department to operate as a mortgage licensee under AS 06.60;
- (3) an indication as to whether the applicant seeks licensing under AS 06.60.035(a);
- (4) written verification that the applicant has received a passing score on the competency test required by AS 06.60.040;
- (5) a complete set of fingerprints of the applicant in a form acceptable to the Department of Public Safety; and
- (6) other information, documentation, and payments as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.025 AS 06.60.040 AS 06.60.910  
AS 06.60.035 AS 06.60.065

**3 AAC 14.065. REIMBURSEMENT OF COSTS AND INVESTIGATIVE EXPENSES RELATED TO APPLICATIONS.** When the department evaluates an application for a license under AS 06.60 and addresses any potential grounds for denial, if the reasonable costs and reasonable investigative fees, including examination costs, incurred by the department exceed a fee established in AS 06.60.035(a)(1) or (2), the applicant shall reimburse those excess fees and costs, at the rate of \$75 per hour, before the department takes action on the application.

**Authority:** AS 06.60.035 AS 06.60.250 AS 06.60.910

**3 AAC 14.070. PAYMENT OF FEES REQUIRED.** The department will not take action with respect to an application unless the applicable fees established in AS 06.60 or in this chapter have been received.

**Authority:** AS 06.60.035 AS 06.60.105 AS 06.60.910  
AS 06.60.085

**3 AAC 14.075. NOTICE OF COMPLETE APPLICATION.** The department will provide written notice to the applicant of the receipt of a complete application. For the purpose of beginning the 30-day period described in AS 06.60.050, the date the department sends the notice is the date of the determination that the department has received a complete application.

**Authority:** AS 06.60.020 AS 06.60.050 AS 06.60.910  
AS 06.60.025

**3 AAC 14.080. ORIGINATOR FEE WAIVER.** (a) The natural person who is designated on a mortgage license application under AS 06.60.020(4) as the individual to receive an originator license for the mortgage licensee is not required to pay the application fee or the biennial license fee for the requested originator license at the time of the initial license application or at the time of license renewal if the natural person

- (1) is concurrently applying for or renewing both a mortgage license and an originator license;
- (2) is the principal owner or legally authorized manager of the mortgage license applicant; and
- (3) pays the required fees and expenses under AS 06.60.035 or 06.60.105 for the initial mortgage license or its renewal.

(b) Only one natural person may receive a fee waiver under AS 06.60.035, 06.60.105, and this section.

(c) In AS 06.60.035(c), 06.60.105(d), and this section,

(1) "legally authorized manager" means an individual authorized by the owner of the mortgage license applicant to act as the manager for the mortgage license applicant;

(2) "principal owner" means an individual who holds a majority of the ownership of the mortgage license applicant.

**Authority:** AS 06.60.020 AS 06.60.105 AS 06.60.910  
AS 06.60.035

**3 AAC 14.085. ABANDONED APPLICATIONS.** (a) An application is considered abandoned when 12 months have elapsed since correspondence was last received from or on behalf of the applicant.

(b) An abandoned application is denied without prejudice and the application and biennial fees are forfeited.

**Authority:** AS 06.60.910

**3 AAC 14.090. MORTGAGE LICENSEE AND ORIGINATOR LICENSING BETWEEN JULY 1, 2008 AND MARCH 1, 2009.** (a) In accordance with sec. 10, ch. 50, SLA 2007, a person who is engaging in activities for which a license is required under AS 06.60 on June 30, 2008 is not required to comply with the licensing requirements of AS 06.60 until March 1, 2009. A person required to be licensed as an originator between July 1, 2008, and March 1, 2009 may satisfy the requirement of AS 06.60.010(b) and 06.60.155 that the originator licensee work under exclusive contract for, or as an employee of, a mortgage licensee, by working under exclusive contract for, or as an employee of, a person authorized under sec. 10, ch. 50, SLA 2007 to operate as a mortgage lender or mortgage broker without being licensed as a mortgage licensee under AS 06.60.

(b) The department will consider a person to be engaging in activities for which a license is required under AS 06.60 on June 30, 2008, if the person is operating as a mortgage broker, mortgage lender, or originator on June 30, 2008 under a current business license issued under AS 43.70 for that purpose.

**Authority:** AS 06.60.910 Sec. 10, ch. 50, SLA 2007

## **ARTICLE 2. REGISTRATION AS A SMALL MORTGAGE LENDER OR SMALL MORTGAGE ORIGINATOR.**

### **Section**

- 110. Application for small mortgage lender registration**
- 115. Application for small mortgage originator registration**
- 120. Small mortgage originator employment or exclusive contract**
- 125. Small mortgage lender operation through small mortgage originator**
- 130. Loan limit for small mortgage lender**
- 135. Application for renewal of small mortgage lender registration**
- 140. Small mortgage originator registration renewal application**
- 145. Notice of receipt of complete application**

**3 AAC 14.110. APPLICATION FOR SMALL MORTGAGE LENDER REGISTRATION.** To apply for registration as a small mortgage lender under AS 06.60.017, a person must submit

(1) a complete application on a form established by the department;

(2) the application fee required by AS 06.60.017;

(3) a sworn certification that all money used in the operation of the person's business as a small mortgage lender belongs to the person and is not borrowed or received from another person; in AS 06.60.017(b)(3) and this paragraph, "received" means obtained from a person who retains a security interest or other ownership interest in the business of small mortgage lender;

(4) a complete set of fingerprints, in a form that is acceptable to the Department of Public Safety, of an applicant who is a natural person;

(5) for an applicant that is a corporation, limited liability company, partnership, or other business entity, a complete set of fingerprints of the directors, officers, members, owners, and other principals of the applicant;

(6) a signed acknowledgement that a registered small mortgage lender is prohibited under 3 AAC 14.130 from consummating more than six mortgage loans per year of registration; and

(7) other information and documentation as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.115. APPLICATION FOR SMALL MORTGAGE ORIGINATOR REGISTRATION.** To apply for registration as a small mortgage originator under AS 06.60.017, a person must submit

- (1) a complete application on a form established by the department;
- (2) the application fee required by AS 06.60.017;
- (3) identification of the registered small mortgage lender for whom the applicant will provide originator services and a copy of that small mortgage lender's valid registration under AS 06.60.017;
- (4) a description of the employment or other contractual relationship that shall govern the originator applicant and a small mortgage lender subsequent to the originator's registration;
- (5) a complete set of fingerprints of the applicant in a form that is acceptable to the Department of Public Safety;
- (6) a sworn certification that all information and statements in the application or submitted in support of the application are true; and
- (7) other information and documentation as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.120. SMALL MORTGAGE ORIGINATOR EMPLOYMENT OR EXCLUSIVE CONTRACT.**

A person registered as a small mortgage originator may not operate as an originator except as an employee of, or under exclusive contract for, a registered small mortgage lender.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.125. SMALL MORTGAGE LENDER OPERATION THROUGH SMALL MORTGAGE ORIGINATOR.** A small mortgage lender may not operate as an originator except through a registered small mortgage originator.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.130. LOAN LIMIT FOR SMALL MORTGAGE LENDER.** A person registered as a small mortgage lender may not consummate more than six mortgage loans per year of registration. In this section, "year of registration" means a 12-month period beginning annually on the day and month that the original registration became effective.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.135. APPLICATION FOR RENEWAL OF SMALL MORTGAGE LENDER REGISTRATION.** A small mortgage lender applying for renewal of its registration shall provide to the department

- (1) a copy of the small mortgage lender's current business license issued under AS 43.70;
- (2) a financial statement prepared within 12 months before the date the department receives the renewal application;
- (3) a sworn certification attesting to
  - (A) changes in the information provided to the department at the time of the initial application for registration or at the most recent renewal of registration; or
  - (B) the continuing accuracy of the information previously provided to the department.
- (4) other information and documentation as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.140. SMALL MORTGAGE ORIGINATOR REGISTRATION RENEWAL APPLICATION.**

A small mortgage originator applying for renewal of registration shall provide

- (1) a sworn certification attesting to
  - (A) changes in the information provided to the department at the time of the initial application for registration or at the most recent renewal of registration; or
  - (B) the continuing accuracy of the information previously provided to the department; and
- (2) other information and documentation as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.017 AS 06.60.910

**3 AAC 14.145. NOTICE OF COMPLETE APPLICATION.** The department will provide written notice to the applicant of the receipt of a complete application. For the purpose of beginning the 30-day period described in AS 06.60.017, the date the department sends the notice is the date of the determination that the department has received a complete application.

**Authority:** AS 06.60.017 AS 06.60.910

**ARTICLE 3.  
ORIGINATOR COMPETENCY TESTING AND  
CONTINUING EDUCATION.**

**Section**

- 210. Originator competency testing**
- 215. Competency test review**
- 220. Originator continuing education requirements**
- 225. Submission of continuing education course for department approval**
- 230. Review of approved instruction**
- 235. Withdrawal of approval**
- 240. Renewal of approval**
- 245. Education committee**

**3 AAC 14.210. ORIGINATOR COMPETENCY TESTING.** (a) As part of the originator competency test required under AS 06.60.040, the department will test applicants on compliance with legal provisions relevant to a person operating as an originator.

(b) The minimum passing score on the originator competency test is 75 percent.

(c) The originator competency test will be administered no less frequently than quarterly. The department will publish on the Internet the schedule of times and locations at which the examination will be administered.

**Authority:** AS 06.60.040 AS 06.60.910

**3 AAC 14.215. COMPETENCY TEST REVIEW.** (a) An applicant who wishes to review a failed competency test shall submit a written request to the department within 30 days after the notice of examination results is mailed to the applicant.

(b) All test reviews will be conducted in the presence of department staff or the department's designee at the time and location determined by the department. A test review will not be conducted within 30 days of the next test the applicant is scheduled to take.

(c) Only an applicant who has failed a test may participate in the review and the applicant may review only the applicant's own test.

(d) An applicant may use the same reference materials during a test review that were allowed during the test itself. Applicants may not use other materials or take notes or make copies of any kind. All materials brought to a review are subject to inspection by the department.

(e) An applicant may challenge questions on the test by submitting the challenge in writing during the time allowed to conduct the test review under (g) of this section. The written challenge to a test question must include

- (1) the applicant's name;
- (2) the date of the test;
- (3) the title of the test;
- (4) the number of the question being challenged; and
- (5) a detailed explanation of the reason for the challenge.

(f) A challenge to a test question will be reviewed by the department. If the department sustains a challenge to a test question, the department will give credit to the applicant for that question.

(g) To conduct the test review, the department will allow the applicant challenging a question under (e) of this section one-half of the length of time that was allowed for the taking of the test being reviewed.

(h) Unless the release is prohibited by law or contract, the department will provide an applicant during the test review under (g) of this section with the questions answered incorrectly on the failed test, the answer that the applicant selected, and the answer considered to be correct by the department.

**Authority:** AS 06.60.040 AS 06.60.910

**3 AAC 14.220. ORIGINATOR CONTINUING EDUCATION REQUIREMENTS.** (a) Continuing education required under AS 06.60.160 must be completed by an originator licensee within the biennial license period before license renewal or reactivation.

(b) A course of approved instruction must be of a minimum duration of one credit hour and must contribute to the goal of maintaining or increasing the knowledge, skill, and competence of an originator necessary to operate in compliance with law. The principal focus of a course of approved instruction may not be sales, marketing, commercial lending or commercial loan brokering, motivational goals, or skills pertaining to running a business.

(c) An originator licensee who successfully completes a course of approved instruction may not receive continuing education credit for repeating that course within the same biennial license period.

(d) For each course of approved instruction, and as part of the application for license renewal or reactivation, an originator licensee shall submit to the department a certificate of completion issued by the course provider. An originator licensee shall maintain a copy of that certificate for no less than three years following completion of the course of approved instruction.

(e) The department may suspend or revoke the license of, and will deny renewal or reactivation of the license of, an originator licensee who fails to complete the continuing education required by AS 06.60.160 and this chapter or whose certification or other documentation of continuing education is not timely submitted to the department. If the department denies, suspends, or revokes a license for failure to complete or report continuing education, a person may not obtain a new license or reinstated license without first satisfying the applicable continuing education requirements.

**Authority:** AS 06.60.160 AS 06.60.910

**3 AAC 14.225. SUBMISSION OF CONTINUING EDUCATION COURSE FOR DEPARTMENT APPROVAL.** (a) To request approval of a course of instruction for purposes of AS 06.60.160, a course provider must submit an application, in a form provided by the department, for each course that the provider proposes to offer. The application must include

- (1) the name and address of the provider and each proposed dates and location of the course;
- (2) the qualifications and experience of each of the provider's principal officers, staff, and instructors;
- (3) a copy of the proposed course materials together with a description of each course for which approval is sought; and
- (4) a sample of what is provided to participants to verify course completion.

(b) The department will approve a course of instruction if

(1) the course constitutes an organized program of learning that provides instruction on one or more of the following subjects:

- (A) basics of home purchase and ownership;
- (B) the residential mortgage industry generally;
- (C) residential mortgage loan evaluation and documentation;
- (D) features of residential mortgage loan products;
- (E) state and federally required disclosures;
- (F) ethical considerations in the residential mortgage industry;
- (G) AS 06.60 (Mortgage Lending Regulation Act);
- (H) the law related to mortgages, deeds of trust, and liens;
- (I) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act);
- (J) 12 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit Protection Act);

(2) the course materials are prepared and instruction conducted by an individual or group qualified by practical or academic experience in the subject matter to be presented;

(3) course outlines, syllabi, workbooks, examinations, study guides, and other instructional material are of high quality and relevant to the course of study offered;

(4) each course is in accordance with 3 AAC 14.220(b); and

(5) the prospective provider's application is complete and truthful.

(c) A course of instruction in accordance with (b)(1) - (4) of this section that is provided by any of following organizations is approved, and an application for approval is not required:

- (1) the National Association of Mortgage Brokers;
- (2) the Mortgage Bankers Association;
- (3) the National Association of Professional Mortgage Women;
- (4) the Federal National Mortgage Association;
- (5) the Federal Home Loan Mortgage Corporation;
- (6) the American Bankers Association;
- (7) the Conference of State Bank Supervisors;
- (8) the American Association of Residential Mortgage Regulators;
- (9) regulatory agencies of any state or of the United States that have regulatory authority over mortgage-related activity;

(10) postsecondary educational institutions authorized under AS 14.48 by the Alaska Commission on Postsecondary Education, or similar institutions authorized by an agency of another state.

**Authority:** AS 06.60.160 AS 06.60.910

**3 AAC 14.230. REVIEW OF APPROVED INSTRUCTION.** (a) The provider of an approved course of instruction shall designate one individual as its contact person who shall be available to the department during ordinary business hours and shall be knowledgeable and have the authority to act with regard to course content, instructors, and recordkeeping.

(b) Before implementing any material change in a course of approved instruction, the course provider must receive the written approval of the department.

(c) Within 30 days after the conclusion of a course of approved instruction, the course provider shall submit to the department an attendance roster in a form approved by the department. The course provider shall maintain records related to participant attendance and completion of the course for no less than three years after the conclusion of the course.

**Authority:** AS 06.60.160 AS 06.60.910

**3 AAC 14.235. WITHDRAWAL OF APPROVAL.** (a) The department may withdraw its approval of a course of instruction if

(1) the instructional teaching method or content no longer meets the requirements of 3 AAC 14.225(b)(1) - (4) or has been materially changed without notice to and approval by the department as required under 3 AAC 14.230(b);

(2) the course provider granted a certificate of completion when in fact the participant had not satisfactorily completed the course;

(3) the course provider failed to grant a certificate of completion to a participant when in fact the participant had satisfactorily completed the course; or

(4) records are not maintained as required under 3 AAC 14.230(c).

(b) The department will reinstate a withdrawn approval upon proof satisfactory to the department that the conditions responsible for the withdrawal have been corrected.

**Authority:** AS 06.60.160 AS 06.60.910

**3 AAC 14.240. RENEWAL OF APPROVAL.** The department's approval under 3 AAC 14.225(a) - (b) of a course of instruction expires two years after the date of issuance. To renew the approval, the course provider must submit, no later than 30 days before the approval's expiration date, a complete application for renewal, in a form prescribed by the department, and must include documentation demonstrating that the course of instruction continues to meet the requirements of 3 AAC 14.225(b)(1) - (4).

**Authority:** AS 06.60.160 AS 06.60.910

**3 AAC 14.245. EDUCATION COMMITTEE.** (a) Under AS 06.60.160, the commissioner will appoint the members of the education committee for staggered terms of four years. A member of the education committee serves until a successor is appointed. An appointment to fill a vacancy in the education committee is for the remainder of the unexpired term. A member who has served all or part of two successive terms on the education committee may not be reappointed to the education committee unless four years have elapsed since the person last served on the education committee.

(b) The commissioner will designate the chair of the education committee and a secretary may be elected by the members of the committee.

(c) A majority of the membership of the education committee constitutes a quorum.

(d) The education committee shall hold meetings as needed to make recommendations to the department regarding applications for accreditation for continuing education courses under this chapter. A meeting may be held by teleconference.

**Authority:** AS 06.60.160 AS 06.60.910

#### **ARTICLE 4. LICENSE DURATION, RENEWAL, INACTIVITY, AND SURRENDER.**

##### **Section**

**310. License renewal**

**315. License, registration, or exemption lapse**

**320. Effective date of renewed license, registration, or exemption**

**325. Inactive license**

**330. Surrender of mortgage license**

**3 AAC 14.310. LICENSE RENEWAL.** (a) The department will provide written notice to the applicant of the receipt of a complete application for renewal under AS 06.60.085. For the purpose of beginning the 30-day period described in AS 06.60.085(b), the date the department sends the notice is the date of the determination that the department has received a complete application.

(b) In the application for license renewal, the applicant must submit to the department a sworn certification identifying any changes in the information presented in the initial license application or in the most recent renewal application.

**Authority:** AS 06.60.085 AS 06.60.910

**3 AAC 14.315. LICENSE, REGISTRATION, OR EXEMPTION LAPSE.** (a) If a license, registration, or exemption is not renewed on or before the date set for its expiration, the license, registration, or exemption lapses. In addition to renewal fees required for reinstatement of the lapsed license, registration, or exemption, the

department will charge a delayed renewal fee of \$50, plus the reasonable costs under AS 06.60.250 of any investigation. The fee must be paid before a license, registration, or exemption that has lapsed may be renewed.

(b) A license or registration may not be renewed and a new application or exemption form for licensure or registration will be required, if it has been lapsed for more than 60 days.

**Authority:** AS 06.60.085 AS 06.60.090 AS 06.60.910

**3 AAC 14.320. EFFECTIVE DATE OF RENEWED LICENSE, REGISTRATION, OR EXEMPTION.**

(a) The department may show a retroactive effective date on a licensee's, registrant's, or exempt person's renewed license, registration, or exemption if the licensee, registrant, or exempt person

(1) holds a license, registration, or exemption that has been lapsed fewer than 60 days;  
(2) requests in writing that the department issue a renewed license, registration, or exemption showing an effective date that is earlier than the date the renewed license, registration, or exemption was issued;

(3) documents that the licensee, registrant, or exempt person was in substantial compliance with the renewal requirements in AS 06.60.085 as of the requested effective date; and

(4) establishes to the satisfaction of the department that the licensee, registrant, or exempt person made a good faith effort to strictly comply with the renewal requirements.

(b) The department will not issue a renewed license, registration, or exemption with an effective date that is earlier than the postmark date of the licensee's, registrant's or exempt person's first written attempt to renew the license, registration, or exemption. For purposes of this subsection, a written attempt to renew is an effort by the licensee, registrant, or exempt person to submit the proper documentation to comply with the applicable renewal requirements of AS 06.60 and this chapter. A request for a renewal application form alone does not constitute a written attempt to renew.

**Authority:** AS 06.60.085 AS 06.60.910

**3 AAC 14.325. INACTIVE LICENSE.** (a) If a license becomes inactive under AS 06.60.090, the license remains inactive until the license expires or is revoked or suspended, the person who holds the inactive license surrenders the license, or the department grants the person's request to reactivate the license, whichever first occurs.

(b) The fee to reactivate an inactive license is \$50, plus the reasonable costs under AS 06.60.250 of any investigation.

**Authority:** AS 06.60.090 AS 06.60.910

**3 AAC 14.330. SURRENDER OF MORTGAGE LICENSE.** The voluntary surrender of a mortgage license is not effective until the mortgage licensee has provided proof acceptable to the department that all loans of that mortgage licensee have either been paid in full or sold.

**Authority:** AS 06.60.097 AS 06.60.910

**ARTICLE 5.  
LICENSEE OBLIGATIONS.**

**Section**

- 410. Reports**
- 415. Supervision required**
- 420. Records of mortgage licensee**
- 425. Branch offices**
- 430. Office closure**
- 435. Location of business**
- 440. Amendments to information on file with department**
- 445. Termination of operations**

**3 AAC 14.410. REPORTS.** The annual report required under AS 06.60.100 must include, as to the mortgage licensee,

- (1) the total number and dollar amount of mortgage loans closed;
- (2) the total number of mortgage loan applications received;
- (3) the total number of brokerage agreements executed;
- (4) the total number of persons hired by the mortgage licensee to operate as originators, the number who were hired as employees, and the number who were hired under an exclusive contract; and
- (5) any other information as allowed by AS 06.60 and that the department determines is required for the department to conduct its review.

**Authority:** AS 06.60.100

AS 06.60.910

**3 AAC 14.415. SUPERVISION REQUIRED.** (a) A mortgage licensee shall supervise all operations and personnel at its principal office and any branch offices to insure compliance with AS 06.60 and this chapter. The mortgage licensee shall diligently supervise each person operating as an originator for the mortgage licensee, whether under an exclusive contract or as an employee.

(b) The mortgage licensee shall

(1) establish, maintain, and enforce procedures to supervise the activities of all personnel, including persons operating as originators on behalf of the mortgage licensee;

(2) monitor and review the activities of all personnel at each business location, including persons operating as originators on behalf of the mortgage licensee, to insure compliance with AS 06.60 and this chapter;

(3) ensure that each originator working on behalf of the mortgage licensee has the training and education needed to comply with AS 06.60 and this chapter; and

(4) maintain a list of each person at each location with whom the mortgage licensee has an affiliated business arrangement under 12 U.S.C. 2601 - 2617 (Real Estate Procedures Settlement Act of 1974).

**Authority:** AS 06.60.159

AS 06.60.910

**3 AAC 14.420. RECORDS OF MORTGAGE LICENSEE.** (a) A mortgage licensee shall maintain

(1) a list of all signed loan applications or executed fee agreements that provides each the following items:

(A) the applicant's name;

(B) the application date;

(C) the amount of the initial loan request;

(D) the final disposition date;

(E) whether the loan was funded or denied, or any other disposition;

(F) the name of the originator;

(2) a cash receipts journal or other record of all money received in connection with a mortgage loan; the journal or other record must contain

(A) the original contract with the customer for the mortgage licensee's compensation;

(B) copies of the note, settlement statement, and truth-in-lending disclosure; and

(C) an account of fees received in connection with the loan, and other papers or records relating to the loan that may be required by department order or any applicable state or federal regulation;

(3) documentation of trust or escrow money showing the

(A) borrower's name and the name of each co-borrower, if any;

(B) loan number, if any;

(C) amount received;

(D) purpose for the amount received;

(E) date received;

(F) date deposited into the trust or escrow account;

(G) amount disbursed;

(H) date disbursed;

(I) disbursement's payee and purpose; and

(J) balance;

(4) a file for each closed application for a mortgage loan; the file must contain

(A) a settlement statement, a denial or withdrawal letter, or other documentation showing the application's final disposition;

(B) correspondence sent or received by the mortgage licensee relating to the loan application;

(C) the contract with, agreement with, and escrow instructions to any depository institution;

(D) documents showing compliance with federal law referenced in AS 06.60.300; and

(E) an itemized list of each fee taken in advance of the closing of a loan, including the appraisal fee, credit report fee, and application fee;

(5) a copy of advertising that references the mortgage licensee's business or that was paid for by the mortgage licensee;

(6) copies of any governmental or regulatory compliance reviews;

(7) if the mortgage licensee is not a natural person, a file containing

(A) organizational documents for the entity;

(B) minutes of board of directors or members meetings;

(C) a stock or ownership transfer ledger or other record showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and

(D) an annual report, if required by state or federal law;

(8) if the mortgage licensee or a person directly or indirectly owning more than 40 percent of the mortgage licensee has a felony conviction, a copy of the judgment or other record of conviction;

(9) if the mortgage licensee or a person directly or indirectly owning more than 40 percent of the mortgage licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the mortgage licensee, and any judgment, dismissal, or other final order disposing of the action;

(10) if the department has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name and telephone number to contact for them; and

(11) other records required to be maintained under state or federal law.

(b) Documents required to be maintained under (a)(5) - (11) of this section must be maintained for three years after the date the document is created unless a longer retention period is otherwise required by law.

(c) If a licensee does business in other states, it must be able to separate information regarding business transactions that occur entirely or partially in this state from information relating to other states, to enable the department to conduct an examination.

**Authority:** AS 06.60.135 AS 06.60.910

**3 AAC 14.425. BRANCH OFFICES.** (a) A mortgage licensee must submit an application for a branch office on a form provided by the department, including

(1) the address of the proposed branch office;

(2) identification of the principal office;

(3) the name and qualifications of the individual designated to manage the branch office; and

(4) the name of each mortgage licensee, registered small mortgage lender or originator, and licensed originator who will work at the branch office.

(b) A revised license for a branch office may be issued only in the name in which the mortgage licensee is licensed to conduct business at its principal office.

(c) A mortgage licensee is responsible for and shall supervise all business operations subject to AS 06.60 and this chapter at a branch office of the mortgage licensee.

**Authority:** AS 06.60.110 AS 06.60.115 AS 06.60.910

**3 AAC 14.430. OFFICE CLOSURE.** (a) A mortgage licensee may not close the principal office or a branch office without the prior written approval of the department. A mortgage licensee must file an application for the approval of the closure of the principal office or a branch office.

(b) The application for office closure must contain

(1) information regarding the status of each incomplete or pending application for a mortgage loan; that information must include

(A) the manner in which the loan application will be finalized, transferred or returned; and

(B) an accounting of any money received by the mortgage licensee or originator licensee from the borrower or potential borrower;

(2) an accounting of any trust or escrow account maintained by the mortgage licensee and a plan for distribution of money in the account;

(3) if an originator employed by or under contract with the mortgage licensee has been terminated, evidence of the termination;

(4) identification of the location in this state where records of the mortgage licensee will be maintained following the office closure; and

(5) other information or documentation as allowed by AS 06.60 and required by the department.

**Authority:** AS 06.60.115 AS 06.60.910

**3 AAC 14.435. LOCATION OF BUSINESS.** A mortgage licensee may share office space with another business if each business

(1) has office space and signage that are sufficiently separate and distinct for a reasonable customer to understand which business the customer is transacting business with at all times;

(2) operates as a separate legal entity with distinct personnel; and

(3) maintains separate accounts, books, and records.

**Authority:** AS 06.60.110 AS 06.60.910

**3 AAC 14.440. AMENDMENTS TO INFORMATION ON FILE WITH DEPARTMENT.** A licensee or registered small mortgage lender or small mortgage originator shall notify the department in writing within 30 days of any material change in any document or information previously submitted to the department.

**Authority:** AS 06.60.910

**3 AAC 14.445. TERMINATION OF OPERATIONS.** A licensee shall notify the department in writing of its decision to cease operations as a licensee within seven days of that decision.

**Authority:** AS 06.60.097

AS 06.60.910

**ARTICLE 6.  
BUSINESS DUTIES AND RESTRICTIONS, AND  
DISCIPLINARY ACTION.**

**Section**

**510. Misleading, unfair, or deceptive advertising**

**515. Unfair or deceptive mortgage loan practices**

**610. Disciplinary action**

**3 AAC 14.510. MISLEADING, UNFAIR, OR DECEPTIVE ADVERTISING.** Misleading, unfair, or deceptive advertising under AS 06.60.320 and 06.60.340(11) includes the following practices by a person who is required to be licensed or registered by AS 06.60:

(1) making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or has the tendency or capacity to be misleading, or if the person does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based;

(2) advertising without clearly and conspicuously disclosing the complete business name of the mortgage licensee or small mortgage lender, mortgage license number, and telephone number that the mortgage licensee or small mortgage lender has on file with the department;

(3) advertising an address at which the mortgage licensee does not conduct mortgage brokering or mortgage lending activities;

(4) advertising in a manner that misleads a person to believe that the advertisement or solicitation is from a person's current mortgage holder or a government agency, that an offer is a limited opportunity, or that a check is included in the advertising materials;

(5) advertising any program that would be in violation of 24 C.F.R. Part 3500 (Regulation X);

(6) misrepresenting, directly or by failure to adequately disclose, the terms, conditions, or charges incident to the mortgage loan being advertised; a violation of this paragraph includes

(A) advertising an offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms that the mortgage licensee cannot or does not intend to provide, or that the mortgage licensee knows or should know at the time the advertisement is made cannot reasonably be provided; and

(B) advertising terms of credit while knowingly failing to disclose material limitations on the availability of that credit;

(7) advertising in violation of applicable federal regulations.

**Authority:** AS 06.60.320  
AS 06.60.330

AS 06.60.340

AS 06.60.910

**3 AAC 14.515. UNFAIR OR DECEPTIVE MORTGAGE LOAN PRACTICES.** (a) Unfair or deceptive acts or practices under AS 06.60.340(11) include

(1) charging a prepayment penalty that violates AS 45.45.010(g);

(2) failing to give to the borrower or the borrower's attorney the time and reasonable opportunity to review each document that relates to a mortgage loan and is required by this chapter or other applicable law before the disbursement of the mortgage loan money, unless the borrower signs a waiver of the right to receive the time and opportunity for review before disbursement;

(3) accepting any fees required to be disclosed by applicable law that are not disclosed in accordance with applicable law;

(4) refusing to permit a borrower to be represented by the attorney of the borrower's choice in any part of the process of obtaining a mortgage loan;

(5) for a mortgage broker, engaging the services of another mortgage broker who will charge the borrower an additional fee without obtaining in advance the written permission of the borrower to charge that fee, or without specifying the amount of that fee in writing;

(6) directly or indirectly, regardless of the receipt or the expectation of receipt of compensation from the contractor,

(A) providing loan application documents to a home improvement contractor for use by that contractor in connection with the financing by mortgage loans of home improvement contracts;

(B) using a home improvement contractor as an agent for the business of the person subject to AS 06.60.340; or

(C) accepting a mortgage application from a contractor on behalf of a third party.

**Authority:** AS 06.60.340

AS 06.60.910

**3 AAC 14.610. DISCIPLINARY ACTION.** The department may take disciplinary action under AS 06.60.200 against a registrant under AS 06.60.017 or a licensee. The department may take disciplinary action against the mortgage licensee or the small mortgage lender based on the conduct of a person operating as an originator under exclusive contract with or as an employee of the mortgage licensee or the small mortgage lender. The department may also take disciplinary action against the person operating as an originator.

**Authority:** AS 06.60.200 AS 06.60.260 AS 06.60.910

## **ARTICLE 7. ORIGINATOR SURETY FUND.**

### **Section**

- 710. Claims**
- 715. Current address of claimant**
- 720. Notification of claim**
- 725. Department action if licensee does not request hearing**
- 730. Disciplinary action based on final decision**
- 735. Addition to licensee file**

**3 AAC 14.710. CLAIMS.** Claims for reimbursement from the originator surety fund under AS 06.60.500 must

- (1) be accompanied by the filing fee established by AS 06.60.620;
- (2) be submitted on a form provided by the department;
- (3) assert a claim for a loss suffered in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by an originator licensee;
- (4) include a current mailing address and telephone number for the claimant;
- (5) include a current mailing address and telephone number for the mortgage licensee for whom the originator licensee worked, whether as an employee or under an exclusive contract, during the time period relevant to the claim;
- (6) include a current mailing address and telephone number for any party involved in the mortgage loan transaction that is the subject of the fund claim;
- (7) include all the information required by AS 06.60.580 and the claim form itself; and
- (8) be executed under penalty of unsworn falsification.

**Authority:** AS 06.60.580 AS 06.60.620 AS 06.60.910

**3 AAC 14.715. CURRENT ADDRESS OF CLAIMANT.** The claimant shall notify the department in writing of any change in its mailing address or telephone number while its claim is pending. Failure to maintain a current mailing address and telephone number on file with the department while a claim is pending may result in dismissal of the claim.

**Authority:** AS 06.60.580 AS 06.60.910

**3 AAC 14.720. NOTIFICATION OF CLAIM.** (a) Within 30 days after receipt of a fund claim filed under AS 06.60.570 and at least 20 days before a hearing is held on the fund claim, whichever is earlier, the department will mail a copy of the claim, and any documentary material filed with the claim to those entitled to notice under AS 06.60.600.

(b) The department will mail the documents described in (a) of this section by certified mail, return receipt requested.

(c) The department's duty to mail the claim to any other parties involved in the mortgage loan transaction under AS 06.60.600(3) is satisfied by mailing the claim to the parties involved in the mortgage loan transaction who are disclosed in the claim form filed with the department.

(d) In AS 06.60.600(2), "employer of the originator licensee" includes a person who employs the originator licensee under an exclusive contract or as an employee.

**Authority:** AS 06.60.600 AS 06.60.640 AS 06.60.910

**3 AAC 14.725. DEPARTMENT ACTION IF LICENSEE DOES NOT REQUEST A HEARING.** If an originator licensee named in a fund claim under AS 06.60.570 - 06.60.580 does not file a timely request for hearing after receiving written notice of the claim under 3 AAC 14.720, the department will review the materials submitted by the claimant and apply the standards in AS 06.60.680 to prepare a written determination as to whether to award the claimant reimbursement from the fund. The written determination is the final decision of the department, unless the claimant requests a hearing within 30 days of after receipt of the written determination.

**Authority:** AS 06.60.680 AS 06.60.910

**3 AAC 14.730. DISCIPLINARY ACTION BASED ON FINAL DECISION.** The department may use the final decision under AS 06.60.680 as to a fund claim as the basis for disciplinary action against a licensee.

**Authority:** AS 06.60.210 AS 06.60.680 AS 06.60.910

**3 AAC 14.735. ADDITION TO LICENSEE FILE.** When the department pays a claim from the fund, the following information will be added to the license file of each originator licensee named in the findings and conclusions as responsible for the loss:

- (1) a copy of the findings and conclusions and the order adopted by the department;
- (2) proof of payment from the fund to the claimant.

**Authority:** AS 06.60.210 AS 06.60.670 AS 06.60.910  
AS 06.60.650 AS 06.60.680

## **ARTICLE 8. GENERAL PROVISIONS.**

### **Section**

- 910. Filing or submission date**
- 920. Name and address changes**
- 990. Definitions**

**3 AAC 14.910. FILING OR SUBMISSION DATE.** (a) An application for department action under AS 06.60 and this chapter will be considered filed or submitted as of the postmark date of the document. If the document is submitted by a method that does not provide a postmark date, the document will be considered filed or submitted as of the date stamped or otherwise marked on the document when it is received at the department's Juneau office. An electronic filing or submission, if allowed, will be considered filed or submitted at the time the filing or submission is received in electronic form by the department.

(b) For the purposes of this section, "postmark date" means the date of mailing stamped or otherwise marked by the United States Postal Service or other domestic courier service on a document with prepaid postage and correctly addressed to the department's Juneau office.

**Authority:** AS 06.60.910

***Editor's note:** For delivery by United States mail, the address of the department's Juneau office is: Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, and Economic Development, P.O. Box 110806, Juneau, AK 99811-0806. For hand delivery or delivery by domestic courier service, the address of the department's Juneau office is: Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, and Economic Development, 333 W. Willoughby Ave., 9th Floor, Juneau, AK 99801.*

**3 AAC 14.920. NAME AND ADDRESS CHANGES.** (a) A person who is licensed, registered, or exempt under AS 06.60 shall maintain a current, valid mailing address on file with the department. The department will use the latest mailing address on file with the department for official communications, notifications, and service of legal process.

(b) A person who is licensed, registered, or exempt under AS 06.60 shall notify the department, in writing, of a change of mailing address.

(c) If a person who is licensed, registered, or exempt under AS 06.60 changes its name, the person shall submit to the department within 30 days after the change of name

(1) a notification of the change of name, on a form provided by the department that has been completed by the licensee and notarized; and

(2) a copy of the marriage certificate, court document, or other legal document, if applicable, verifying the change of name.

(d) The department will issue a new license, registration, or exemption showing the change of name if a licensee meets the requirements in (c) of this section.

**Authority:** AS 06.60.910

**3 AAC 14.990. DEFINITIONS.** (a) In this chapter, unless the context requires otherwise,

(1) "private delivery service" means a business that delivers letters and packages for a fee;  
(2) "registrant" means a registered small mortgage lender or a registered small mortgage originator under AS 06.60.017 or a registered exempt person under AS 06.60.015;

(3) "small mortgage originator" means an originator who is an employee of, or works under exclusive contract for, a small mortgage lender.

(b) In AS 06.60.990, "mortgage loan processor" means a person who monitors and maintains all documentation required for a mortgage loan application and whose job duties may include obtaining loan verifications, required reports, and other necessary documentation.

(c) In AS 06.60 and this chapter, unless the context requires otherwise,

(1) "advertising" means making or permitting to be made any oral, written, graphic, or pictorial statements, in any manner, whether in print, aurally, or by electronic means, in the course of the solicitation of business;

(2) "branch office" means a location separate from the principal place of business of the mortgage licensee where one or more persons are authorized to act on behalf of a mortgage licensee to perform duties regulated under AS 06.60;

(3) "change in control" means a change in the identity of a person holding a control interest in the mortgage licensee;

(4) "closing" means the process of executing legally binding documents regarding a lien on real property that is subject to a mortgage loan;

(5) "commissioner" means the commissioner of commerce, community, and economic development, or a designee of the commissioner;

(6) "employee" means an individual who has an employment relationship with an employer; in this paragraph, "employment relationship" means an arrangement with one or more of the following characteristics:

(A) the employee receives payment or is paid in a manner that provides payroll deductions for federal unemployment tax and the Federal Insurance Contributions Act and withholding of other federal and state taxes by the employer;

(B) the employer has the right to hire and terminate the employee and hire and terminate the employee's assistants;

(C) the employer provides the methods and procedures for performing the employee's services;

(D) the employer supervises the employee in the conduct of the employee's job and supervises the employee's compliance with applicable law and rules;

(E) the employer has the legal right to control, in any other manner, the methods and results of the employee's services;

(7) "loan application" means the Uniform Residential Loan Application, Fannie Mae Form 1003, Freddie Mac Form 65, any successor form, or any other similar form, whether standardized or unique;

(8) "principal place of business" means a location where an owner, officer, senior manager, or other control person conducts the business of the mortgage licensee and maintains the books and records of the mortgage licensee.

**Authority:** AS 06.60.017

AS 06.60.910