



State of Tennessee
PUBLIC CHAPTER NO. 228

HOUSE BILL NO. 758

By Representatives Todd, Sexton, Lundberg, Lollar, Parkinson, Carr, Pody, McManus

Substituted for: Senate Bill No. 1158

By Senators Norris, Beavers, Johnson, Kyle

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 13, relative to exceptions to the licensure requirements of the Tennessee Residential Lending, Brokerage and Servicing Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-13-201, shall be deleted in its entirety and replaced with the following:

(a) No person shall act as a mortgage lender, mortgage loan broker or mortgage loan servicer in this state without first obtaining a license under this chapter. Except in the case of sale of real property as provided in subsection (b), no contractor or home improvement contractor or other person who supplies materials and renders services in the improvement of real property shall engage in the business of making residential mortgage loans or of being a mortgage loan servicer or mortgage loan broker in this state.

(b)

(1) The requirement of a license under subsection (a) and this chapter do not apply to any of the following; except as provided in subdivision (b)(2):

(A) Any depository institution;

(B) Any subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency;

(C) Any institution regulated by the farm credit administration;

(D) Any individual who makes a residential mortgage loan to, or offers or negotiates terms of a residential mortgage loan with or on behalf of, an immediate family member of the individual;

(E) An individual who makes a residential mortgage loan, or simply offers or negotiates terms of a residential mortgage loan, when the loan is secured by a dwelling that served as the individual's residence;

(F) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client;

(G)

(i) Any person, or person under the control of another person who, as seller, receives or makes in any consecutive twelve-month period five (5) or fewer residential mortgage loans and who does not hold themselves out to the public as being in the residential mortgage lending business;

(ii) No person shall be exempt from subsection (a) and this chapter pursuant to this subdivision (G) if such person makes more than five (5) residential mortgage loans in a consecutive twelve-month period whether such person makes such loans themselves or through another person over whom such person has control;

(iii) For purposes of this subdivision (G), if a person owns a vacant tract of real property which such person subsequently subdivides into separate tracts of real property, the sale of all such subdivided tracts shall be exempt from this chapter, regardless of the number of individual tracts sold and the number of ultimate purchasers of such tracts of real property as long as financing does not include the cost of constructing a dwelling;

(H) A person, or person under the control of a person, engaged solely in commercial real estate lending or a person, or person under the control of a person, who provides financing on property which is not and is not intended to be owner-occupied by the person receiving the financing. This exception includes, but is not limited to, a person who provides financing for a property which will be subsequently leased or sold to a third party;

(I) Any person, or person under the control of a person, who makes a mortgage loan to an employee of such person as an employment benefit, employment incentive, or relocation package;

(J) Any person, or person under the control of a person, doing any act related to mortgage loans pursuant to an order of a court of competent jurisdiction;

(K) A person that performs only real estate brokerage activities and is licensed pursuant to the Tennessee Real Estate Broker License Act of 1973, compiled in title 62, chapter 13. Such person is permitted to communicate and include in any contract any mortgage terms agreed upon by the parties for the real property being financed without being required to be licensed under this chapter; and

(L) A person that performs land title insurance services in connection with a closing of a sale transaction and is licensed pursuant to the provisions of title 56, chapter 6 and the rules of the Tennessee department of commerce and insurance compiled at chapter 0780-1-56. Such person is permitted to communicate and include in any closing documents any mortgage terms agreed upon by the parties for the real property being financed without being required to be licensed under this chapter.

(2) This subsection (b) does not exempt a person from licensure as a mortgage loan originator if the United States Department of Housing and Urban Development or its duly designated successor has expressly determined that the person is subject to licensure as a mortgage loan originator as the term is defined in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, *et seq.*

(c) The requirement of a license to act as a mortgage lender under subsection (a) and the requirements of this chapter pertaining to mortgage lenders, unless otherwise stated, do not apply to any registrant making residential mortgage loans that is authorized to do so under the Industrial Loan and Thrift Companies Act, compiled in chapter 5 of this title; provided, however, that all mortgage loan originators of the registrant must be licensed under part 3 of this chapter.

(d) The commissioner shall be authorized to exempt in whole or in part from the requirements of this chapter additional entities or classes of entities, not including individuals, that the commissioner finds inappropriate to include to effectuate the

HB 758

purposes of this chapter, so long as the exemption is compliant with and does not impede the purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 2 U.S.C. § 5101, et seq.

(e) Upon approval or consent by the United States department of housing and urban development, the commissioner shall be authorized to exempt in whole or in part from this chapter additional individuals or classes of individuals, such as those working for bona fide nonprofit corporations and government agencies, that the commissioner finds inappropriate to include to effectuate the purposes of this chapter.

SECTION 2. The secretary of state is directed to deliver a copy of this act to the appropriate division of the United States department of housing and urban development having responsibility for administering the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.

HOUSE BILL NO. 758

PASSED: May 2, 2011



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 20 day of May 2011



BILL HASLAM, GOVERNOR