

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND THIRD LEGISLATURE

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**Legislative Document**

**No. 187**

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H. P. 92

House of Representatives, January 18, 1967

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Ross of Bath and Mr. Cote of Lewiston.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-SEVEN

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### AN ACT Regulating Secondary Mortgage Loans.

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Be it enacted by the People of the State of Maine, as follows:

**R. S., T. 9, part 10, additional.** Title 9 of the Revised Statutes is amended by adding a new part 10 to read as follows:

#### PART 10

#### SECONDARY MORTGAGE LOANS

#### CHAPTER 380

#### SECONDARY MORTGAGE LOANS

§ 4001. Short title

Chapter 380 may be cited as "The Secondary Mortgage Loan Act."

§ 4002. Definitions

The following words and phrases used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. Commissioner. "Commissioner" means the Bank Commissioner and includes those members of his department designated by him to administer and enforce this chapter.

2. Interest. "Interest" or "interest charges" means:

A. The charges as permitted in section 4008, subsection 1, when charged, contracted for or received by a person licensed under this chapter, or excepted by section 4003, subsection 2.

B. The charges made by the lender after deducting the charges permitted by section 4008, subsections 2, 3, 4 and 5, when charged, contracted for or received by a person other than a person licensed under this chapter or excepted by section 4003, subsection 2, on a secondary mortgage loan or a loan that has all the characteristics of such loan with the exception of the characteristic described in subsection 7, paragraph E.

3. Licensee. "Licensee" means any person duly licensed by the commissioner under this chapter, or an employee of such person.

4. Net assets. "Net assets" means the excess of market value of assets over liabilities.

5. Original principal amount. "Original principal amount" means the amount of the note or loan contract less the interest charge.

6. Person. "Person" means and includes individuals, partnerships, associations or corporations.

7. Secondary mortgage loan. "Secondary mortgage loan" means a loan which has all of the following characteristics:

A. Which is secured in whole or in part by a mortgage upon real estate which property is subject to the lien of a prior mortgage. If the mortgagee already has a first mortgage upon real estate and takes a junior mortgage or makes a future advance or open end loan on such real estate such shall not be considered a secondary mortgage.

B. The principal amount of which is in excess of \$2,500.

C. Which is made to one or more individuals.

D. Which is secured in whole or in part by a mortgage upon any interest in real property used as a dwelling actually occupied by the borrower, with accommodations for not more than 4 families.

E. Upon which the lender charges, contracts for or receives a greater rate of interest than 8% per year computed upon the basis of a true interest rate.

F. The proceeds of which are used primarily for personal, family and household purposes, or one or more of these purposes, or for the purchase or maintenance of real estate as described in paragraph D.

8. True interest rate. "True interest rate" means an interest rate applied to the unpaid balance which is the same for each unit time-period and for the total time of a credit transaction.

#### § 4003. License

1. License. No person shall, on behalf of himself or any other person, engage in the business of making secondary mortgage loans, as defined in section 4002, without first having obtained a license from the commissioner. A person shall not be deemed to be engaged in the business of making secondary mortgage loans if he makes or negotiates not more than one secondary mortgage loan in a calendar year.

2. **Exception.** No financial institution as defined in section 222, insurance company, state chartered credit union, or credit union, national banking association or other financial institution or agency holding a federal charter, authorized to do business in this State, shall be subject to this chapter, except that such lenders shall be subject to section 4008 as to secondary mortgage loans. Any secondary mortgage loan made by any such lender on which interest charges and other charges exceed those permitted by section 4008 shall be subject to section 4007 and any such lender shall be subject to the penalties provided for in section 4011, subsection 1.

#### § 4004. Application

1. **Application.** The application shall be in writing under oath, in the form prescribed by the commissioner, and shall state the name and residence and business addresses of the applicant, and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof. It shall state the address where the business is to be conducted, demonstrate the financial responsibility of the applicant and set forth any other information the commissioner may require.

Upon the filing of such application, and the payment by the applicant of \$100 as an investigation fee and \$100 as an annual license fee, the commissioner shall investigate the relevant facts. No license shall be issued unless such fees have been submitted to the commissioner and no license fee or investigation fee will be returned after a license has been issued.

Within 10 days after the filing of such application, the commissioner shall give such notice of the filing of the application as he deems appropriate and adequate. If objections to the issuance of the license are filed with the commissioner within 20 days after such notice, or if the commissioner has doubts that the applicant can meet the requirements provided for in this section, the commissioner shall so notify the applicant, in writing, within 10 days after the expiration of the 20 days' limitation for the filing of objections. The applicant may, within 15 days thereafter, request a hearing on the application and if such request is made, the commissioner shall designate a time and place for such hearing, which time shall be not less than 7 days nor more than 30 days from the date such request for a hearing is made and the commissioner shall notify the applicant, and any persons that have filed objections, of the time and place so designated.

If the commissioner shall find, after his investigation and after any hearing, that the financial responsibility, experience, character and general fitness of the applicant, and members thereof if the applicant is a partnership, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter and that the applicant has available for the purpose of making loans under this chapter net assets of a least \$25,000 and that if the applicant is a corporation, that such corporation was formed or organized under the laws of the State of Maine, he shall thereupon enter an order granting such application, file his findings as a public record in his office and forthwith issue and deliver a license to the applicant. If he shall not so find, he shall enter an order denying

the application, file his findings as a public record in his office, and forthwith notify the applicant of the denial. Any person continuously engaged in the business of making secondary mortgage loans, as defined in section 4002 from January 1, 1967, until the effective date of this Act, is entitled to be licensed if application for license is made within 60 days after the effective date of this Act.

The commissioner shall approve or deny every application within 60 days from the filing thereof unless a hearing is held or the period is extended by written agreement between the applicant and the commissioner. In the event of a hearing, the commissioner's decision shall be made within 30 days after the conclusion of the hearing. Upon the refusal of the commissioner to issue such license, an appeal may be taken in accordance with Title 5, chapters 305 to 307.

The license shall not be assignable and shall be kept posted in the place of business of the licensee. Upon refusal of a license, the license fee shall be returned but the investigation fee shall be retained.

2. **Renewal.** Each license shall expire on the last day of December of the year in which issued or for which a license fee shall have been paid, unless prior to each December 15th the licensee shall pay to the commissioner the annual license fee provided for in the 2nd paragraph of subsection 1 for each license held by him which he wishes to continue to hold for the succeeding calendar year, and file with the commissioner substantiation of the renewal or continuance of the bond provided for in subsection 5. The commissioner shall prescribe the form of application for renewal of a license.

3. **Assets.** Every licensee shall maintain for each license net assets of at least \$25,000 either used or readily available for use in the conduct of the business of each licensed office.

4. **Limitation.** No licensee shall conduct the business of making secondary mortgage loans under this chapter under any other name or at any other place of business than that named in the license, except that the foregoing shall in no way be deemed to prohibit the execution of a secondary mortgage loan contract and the disbursement of the principal amount of such loan either at the office of a duly licensed attorney or at the registry of deeds for the county in which all or a portion of the real estate is located. Not more than one office or place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same person upon the payment of an additional license fee and the filing of an additional bond for each license. If a licensee changes the location of his place of business he shall at once give written notice thereof and return his license to the commissioner, who shall amend the license and return it to the licensee.

5. **Bond.** Each applicant shall execute and file with the commissioner, prior to the issuance of each license, a corporate surety bond to the State in the penal sum of \$10,000. The bond shall be conditioned upon the faithful observance of this chapter and the rules and regulations promulgated by the commissioner. Any individual, suffering damages through a violation of this chapter by a licensee, may maintain an action on the bond. The commissioner shall approve the bond before issuing the license.

**§ 4005. Rules and regulations; revocation or suspension of license**

The commissioner is authorized and empowered to make such general rules and regulations, and such specific rulings, demands and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this chapter.

Upon receiving evidence of a violation of this chapter by a licensee, the commissioner, after a hearing thereon, may suspend or revoke a license. The suspension or revocation of a license shall include the suspension or revocation of the privilege to make real estate mortgage loans. The commissioner shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the place of business of the licensee. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the commissioner and shall not be effective until after 10 days' written notice thereof, given after such entry, is forwarded by registered mail to the licensee at such place of business. Any appeal from such order may be taken within 30 days in accordance with Title 5, chapters 305 to 307. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful secondary mortgage loan contract.

**§ 4006. Records kept by licensee; annual report, publication of analysis**

1. Records. Every licensee shall keep records pertaining to secondary mortgage loans made under this chapter as will enable the commissioner to enforce full compliance. Such records shall be segregated from records pertaining to transactions which are not subject to this chapter. All such books, accounts and records shall be preserved and kept available for such period of time as the commissioner may by regulation require. The commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the commissioner to determine compliance with this chapter. The commissioner may, at any time during business hours and as often as he may desire, investigate the loans and business of every licensee and of every person, partnership and corporation by whom or by which any such loan shall be made, whether such person, partnership or corporation shall act, or claim to act, as principal, agent or broker, or under, or without the authority of this chapter. For that purpose he shall have free access to the books, papers and records of all such persons, partnerships and corporations. He shall have authority to examine, under oath, all persons whose testimony he may require relative to such loans or business.

2. Report. Each licensee shall file with the commissioner on or before the 15th day of April each year a report under oath or affirmation concerning the business and operations for the preceding calendar year in the form prescribed by the commissioner, which shall show the annual volume and outstanding amounts of secondary mortgage loans, the classification of such loans made by size and by security, and the gross income from, and expenses properly chargeable to, such loans. Whenever a licensee operates 2 or more licensed offices or

whenever 2 or more affiliated licensees operate licensed offices, then a composite report of such group of licensed offices may be filed in lieu of individual reports.

3. Analysis. The commissioner shall publish biennially an analysis of the information required under subsection 2 as a part of his biennial report.

#### § 4007. Forfeiture

Upon complaint to the proper district court by a debtor, and upon a finding that a willful violation of section 4008 has occurred, the lender shall forfeit the interest charges contracted for as well as the right to any interest upon the principal amount loaned.

#### § 4008. Contract provisions and charges permitted; prohibitions

1. Provisions. No secondary mortgage loan as defined in section 4002 shall provide for repayment over a period exceeding sixty-one months. Subject to compliance with this chapter, any person licensed as provided in section 4004 and institutions cited in section 4003, subsection 2, may contract for and add to the original principal amount of any such loan a maximum interest charge not exceeding \$10 per \$100 per year. Such charge shall be computed on the original principal amount of such loan for the full term of the loan contract without regard to the requirement for installment payments and is based on a schedule of payments in which payments and the intervals between payments are substantially equal. If the schedule of payments is different from that stated above, the licensee may not exceed the effective rates stated above having due regard for the schedule of payments. In all computations of time, and of interest charges, a month shall mean a calendar month, and a year shall consist of 12 calendar months; and in computations of interest charges for any number of days less than a month, a day shall mean a 30th part of a month, and interest charges shall be computed for such fractional parts of a month upon the ratio which such number of days shall bear to 30.

If the contract is prepaid in full, by cash, renewal or a new loan, a portion of the interest charge shall be rebated. The rebate shall be that proportion of the original interest charge for the loan after first deducting from such interest charge an acquisition cost of \$25, which the sum of the monthly balances of the contract scheduled to be outstanding during the installment periods originally scheduled to follow the installment date nearest the date of such prepayment in full bears to the sum of all the monthly balances of the contract originally scheduled by the contract. Any prepayment made on or before the 15th day following the installment date shall be deemed to have been made on the preceding installment date. If a contract is prepaid before the due date of the first scheduled installment, the licensee shall be entitled to retain the portion of the interest charge applicable to the first installment period.

2. Extension charges. A licensee, upon agreement in writing with the borrower, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The licensee may charge and contract for the payment of an extension or deferral charge by the borrower and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount

of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

3. Delinquency charges and attorney's fees. If the secondary mortgage loan contract so provides, the licensee may collect a delinquency charge for each full month that any installment is outstanding after the due date of such installment originally scheduled by the contract equal to that proportion of the original charge for the loan which the amount of the monthly installment bears to the sum of all monthly balances originally scheduled by the contract. A minimum charge equal to the additional charge for one full month may be collected for an installment which is past due more than 10 days. The licensee shall not collect the delinquency charge authorized by this subsection when an extension or deferral charge is collected in accordance with subsection 2. In addition to such delinquency and collection charge, the contract may provide for the payment of reasonable attorneys' fees, where not exceeding 15% of the amount due and payable under such contract, where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract.

4. Credit life insurance. A licensee may require credit life insurance subject to Title 24, sections 1201 to 1214, and may deduct and retain from the original principal amount of the loan an amount equal to the premium charged by the insurer, subject to the same rebate requirement of subsection 1 which applies to the original interest charge for the loan, with the exception of the acquisition cost.

5. Other insurance. A licensee may require the borrower to provide insurance on security against reasonable risks of loss, damage and destruction. The amount and term of such insurance shall be reasonable in relation to the amount and term of the loan contract and the type and value of the security, and such insurance shall be procured in accordance with the insurance laws of this State. The purchase of such insurance through the licensee or an agent or broker designated by the licensee shall not be a condition precedent to the granting of the loan.

6. Other fees. In addition to the charges provided for by this section, no further or other amount, whether in the form of brokerage or placement fees or any other form whatsoever, shall be directly or indirectly charged, contracted for or received, except reasonable fees for credit investigation, appraisal and inspection, title search, legal fees for preparation of documents and lawful fees paid to any public officer to record, file or release security, and except costs, disbursements and attorney fees to which the licensee may become entitled in connection with any action to collect a loan or to realize on a security after default.

#### § 4009. Loan requirements

The following requirements shall apply to all secondary mortgage loans made under this chapter:



1. Requirements. The licensee shall disclose in writing to the borrower, upon a form approved by the commissioner, by delivery to the borrower at the time of signing a secondary mortgage loan contract or note:

- A. The name and address of the borrower and of the lender,
- B. The amount paid to, received by or paid for the account of the borrower,
- C. A description of all insurance required by the lender and a statement of the charge for insurance required by the lender and purchased by the borrower from the lender in connection with the loan,
- D. An itemization of the other charges to the borrower as permitted by section 4008, subsection 6,
- E. The original principal amount of the loan before adding the interest charge,
- F. The original interest charge for the loan,
- G. The amount and date of the note or loan contract and of its maturity,
- H. A description of the payment schedule,
- I. The charge for past due installments,
- J. That the borrower may prepay the loan in whole or in part on any installment date, and that the borrower will receive a rebate for prepayment in full,
- K. The nature of the security.

2. Release. Every licensee shall, upon repayment of a secondary mortgage loan in full by cash, renewal or a new loan, mark plainly every note signed by the borrower with the words "Paid in Full" or "Cancelled" and return to the borrower and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee.

#### § 4010. Advertising

Advertising for secondary mortgage loans subject to this chapter shall not be false, misleading or deceptive. Any reference in advertising to the amount of a loan shall refer to the original principal amount. Any statement of the amount of an installment or the rate or amount of interest charges required for any loan shall indicate the original principal amount of such loan, the number of installments required to pay such loan and the interval between each installment.

#### § 4011. Penalties

1. Violation of sections 4008, 4009 or 4010. Whoever willfully violates sections 4008, 4009 or 4010 shall be punished by a fine of not less than \$100 nor more than \$500.

2. Violation of section 4003. Whoever violates section 4003 shall be punished by a fine of not less than \$500 nor more than \$2,000 for the first offense and for each subsequent offense shall be punished by a fine of not more than \$2,000 or by imprisonment of not less than one nor more than 3 years, or by both.