

**RULES
OF
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS
COMPLIANCE DIVISION**

**CHAPTER 0180-17
RULES PERTAINING TO MORTGAGE LENDING,
LOAN SERVICING AND LOAN BROKERING**

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0180-17-.01 DEFINITIONS.

As used herein:

- (1) "Brokerage Fee" means a fee charged by a mortgage loan broker or residential mortgage lender that is paid by or charged to a loan applicant for mortgage loan origination in which no part of the fee is for service rendered by a third party provider. For the purpose of this rule, brokerage fee is synonymous with finder fee.
- (2) "Commitment" means a written offer to make a residential mortgage loan that is signed by a mortgage lender or that is signed by an employee authorized to sign such a written offer on behalf of a mortgage lender.
- (3) "Commitment agreement" means a commitment accepted by an applicant for a residential mortgage loan, as evidenced by the applicant's signature thereon.
- (4) "Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a residential mortgage loan to third persons other than the mortgage lender or mortgage loan broker or paid by the applicant to or retained by the mortgage lender or mortgage loan broker for transmittal to such third persons in connection with the residential mortgage loan, including, but not limited to, mail service charges, tax service charges, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys, and similar charges.
- (5) "Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a residential mortgage loan in accordance with the terms of the commitment or as a requirement for acceptance by the applicant of a commitment. "Commitment fee" does not include interest or fees paid to third persons.
- (6) (a) "Lock-in agreement" means a written agreement between a mortgage lender and an applicant for a residential mortgage loan that establishes and sets an interest rate, discount points, and lock-in fees to be charged in connection with a residential mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before a residential mortgage loan approval, subject to

(Rule 0180-17-.01, continued)

a residential mortgage loan being approved and closed, or after a residential mortgage loan approval.

- (b) A "commitment agreement" that establishes and sets an interest rate, discount points, and the commitment fees to be charged in connection with a residential mortgage loan that is also closed within the time period specified in the agreement is a lock-in agreement.
- (7) "Lock-in fee" means a fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement. "Lock-in fee" does not include interest or fees paid to third persons.
- (8) "Discount points" means a fee or charge retained or received by a mortgage lender or mortgage loan broker that is stated or calculated as a percentage or fraction of the principal amount of the residential mortgage loan. "Discount points" does not include interest, origination fees, or any fees paid to third persons.
- (9) Unless otherwise provided, all other terms used herein shall have the meaning ascribed to them in the Tennessee Residential Lending, Brokerage and Servicing Act, Chapter 499 of the Public Acts of 2009.

Authority: T.C.A., Title 45, Chapter 13, Tennessee Residential Lending, Brokerage and Servicing Act; T.C.A. §§ 45-1-107(h), 45-13-206 and 45-13-103. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.02 ACCOUNTING FOR FEES TO THIRD PERSONS.

All moneys received by a licensee from an applicant for fees paid to third persons shall be accounted for separately (such as by use of the HUD-1 Settlement Statement), and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206(a) and 45-13-208. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.03 NOTICE OF MORTGAGE TRANSFER.

A transferor of servicing rights under a residential mortgage loan shall give the mortgagor under the loan written notice of the transfer of servicing rights. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least ten (10) calendar days before the first payment affected by the notice is due. The mortgagor under the loan shall be entitled to continue to make payments to the transferor of the servicing rights until the mortgagor is given the notice specified herein, and neither the transferor nor the transferee of the servicing rights shall be entitled to enforce any penalties for late payment or non-payment against the mortgagor based on such continuation.

Authority: T.C.A. §§ 45-1-107(h) and 45-13-103. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.04 LOCK-IN AGREEMENT.

- (1) A lock-in agreement shall include, but not necessarily be limited to, the following:

(Rule 0180-17-.04, continued)

- (a) The interest rate and discount points to be paid by the applicant on the residential mortgage loan, and if the residential mortgage loan has an adjustable interest rate, the initial interest rate to be paid by the applicant on the residential mortgage loan;
- (b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;
- (c) The length of the lock-in period;
- (d) A statement that if the residential mortgage loan is not closed within the lock-in period, the mortgage lender will no longer be obligated by the lock-in agreement and that any lock-in fee paid by the applicant may not be refundable except under certain conditions (the conditions do not have to be specified);
- (e) A statement that any terms not locked in by the lock-in agreement are subject to change until the residential mortgage loan is closed at settlement; and
- (f) Any other terms and conditions of the lock-in agreement required by the mortgage lender.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-206(a). **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.05 REFUND OF LOCK-IN FEE.

A failure by a licensee to return a lock-in fee to an applicant pursuant to the terms of its agreement with the applicant shall constitute grounds to revoke the license of such licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-405(a). **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.06 REFUND OF COMMITMENT FEE.

A failure by a licensee to return a commitment fee to an applicant pursuant to the terms of its agreement with the applicant shall constitute grounds to revoke the license of such licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206(a), 45-13-401(5) and 45-13-405(a). **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.07 BROKERAGE/FINDER FEES.

- (1) Licensees that charge or pay a brokerage/finder fee must provide a schedule of fees paid or charged in their filing papers and cannot alter those charges without thirty (30) days prior written notice to the Department of Financial Institutions.
- (2) A brokerage/finder fee of two percent (2%) or less of the principal amount of the residential mortgage loan is considered fair and reasonable. A brokerage/finder fee that is more than two percent (2%) of the principal amount of the loan is presumed unfair and unreasonable and shall be grounds to revoke the license of such licensee, unless such licensee can provide evidence showing that the fee constitutes fair and reasonable compensation, subject to the restrictions in T.C.A. § 47-14-101, et seq.

(Rule 0180-17-.07, continued)

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-401(5), 45-13-405(a) and 47-14-113(c).
Administrative History: Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.08 SURETY BOND REQUIREMENTS.

- (1) As a condition of renewing a mortgage lender or mortgage loan broker license, the licensee shall file a surety bond in a form approved by the commissioner, providing coverage for each of its mortgage loan originators in an amount reflecting the dollar amount of Tennessee residential mortgage loans originated by the licensee in the calendar year immediately preceding the calendar year in which the renewal application is filed, as follows:
 - (a) For mortgage loan brokers:
 1. Less than \$10,000,000 in loans – bond amount of \$45,000;
 2. \$10,000,000 or more in loans, but less than \$50,000,000 – bond amount of \$90,000; or
 3. \$50,000,000 or more in loans – bond amount of \$135,000.
 - (b) For mortgage lenders:
 1. Less than \$10,000,000 in loans – bond amount of \$100,000;
 2. \$10,000,000 or more in loans, but less than \$50,000,000 – bond amount of \$200,000; or
 3. \$50,000,000 or more in loans – bond amount of \$300,000.
- (2) If the renewal application is being filed in the year in which the license was issued, or in a year in which the license was issued in the immediately preceding calendar year, the mortgage lender or mortgage loan broker shall file as a condition of renewal a surety bond providing coverage for each of its mortgage loan originators in the amount of \$200,000 for a mortgage lender and in the amount of \$90,000 for a mortgage loan broker.
- (3) If the applicant or licensee is a combination of a mortgage lender, mortgage loan broker, and/or mortgage loan servicer, the applicant or licensee is only required to provide one (1) surety bond, which shall be in the highest amount required if the applicant or licensee were solely a mortgage lender, mortgage loan broker, or mortgage loan servicer, and not a combination thereof. An applicant or licensee that is solely a loan servicer shall maintain as a condition of renewal a surety bond in the amount of \$200,000.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-204. **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.09 LETTER OF EXEMPTION.

The Department of Financial Institutions may issue a letter of exemption to any entity or person that provides the Department with sufficient written evidence of exemption that is signed by an authorized legal or corporate representative.

(Rule 0180-17-.09, continued)

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, and 45-13-201(d). **Administrative History:** Original rule filed January 25, 1989; effective May 1, 1989. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.10 FEE FOR SUBSTITUTE LICENSE.

The nonrefundable fee to obtain a substitute license for any license issued under the Tennessee Residential Lending, Brokerage and Servicing Act is twenty-five dollars (\$25.00).

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-107. **Administrative History:** Original rule filed July 26, 1996; effective November 28, 1996. Public necessity rule filed March 8, 2005; effective through August 20, 2005. Amendment filed March 8, 2005; effective May 22, 2005. Repeal and new rule filed May 28, 2010; effective October 29, 2010.

0180-17-.11 EXPERIENCE REQUIRED FOR A LICENSE.

- (1) Experience Required. The Department of Financial Institutions shall not issue a mortgage lender, mortgage loan broker, or mortgage loan servicer license unless the applicant demonstrates at least three (3) years of relevant and substantive experience in the mortgage loan industry. Experience is considered relevant if it occurred within the five (5) years preceding the date of application. The Department shall deny an application for licensure if the applicant does not provide the Department with satisfactory evidence of experience. Experience may be verified with any past or current employers, with taxing authorities, and/or with any other professional references. The experience required under this paragraph is a continuing requirement and the failure of a mortgage lender, mortgage loan broker or mortgage loan servicer to maintain the requisite experience (e.g. if the individual demonstrating the company's experience at initial licensure leaves the company) shall constitute grounds to suspend or revoke the license.
- (2) Mortgage Lenders and Mortgage Loan Brokers. An applicant seeking licensure as a mortgage lender and/or mortgage loan broker must demonstrate experience by the individual designated in the application as the "managing principal." The experience required under paragraph (1) applies to mortgage lenders and mortgage loan brokers licensed prior to the effective date of this rule upon any change in managing principal.
 - (a) Change in Managing Principal. Upon any change in a mortgage lender's or mortgage loan broker's managing principal, the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new managing principal has the requisite three (3) years experience in the mortgage loan industry.
- (3) Mortgage Loan Servicers. An applicant seeking licensure solely as a mortgage loan servicer must demonstrate experience by the single individual identified in the application possessing significant managerial control over the applicant (such as the president or chief executive officer). If the applicant servicer is a sole proprietor, the applicant must demonstrate experience by the sole proprietor. The experience required under paragraph (1) applies to a mortgage loan servicer licensed prior to the effective date of this rule upon any change in the individual designated as demonstrating such experience in its 2010-2011 mortgage loan servicer renewal application.
 - (a) Change in Individual Demonstrating Experience. Upon any change in a mortgage loan servicer's designated individual demonstrating the experience required under paragraph (1), the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new individual has the requisite three (3) years experience in the mortgage loan industry.

(Rule 0180-17-.11, continued)

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-203, 45-13-211, 45-13-401(5) and 45-13-405(a–b).
Administrative History: Original rule filed May 28, 2010; effective October 29, 2010.

0180-17-.12 FINANCIAL STATEMENTS.

Financial statements submitted to the Department of Financial Institutions shall be compiled in accordance with generally accepted accounting principles and certified by an independent certified public accountant or certified public accounting firm. Financial statements shall show compliance with the net worth requirements set forth in T.C.A. § 45-13-203. Financial statements shall include, but are not limited to, an income statement, balance sheet, statement of cash flows, and relevant disclosures.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206 and 45-13-208(a–b). **Administrative History:** Original rule filed May 28, 2010; effective October 29, 2010.

0180-17-.13 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY CHALLENGE PROCESS.

- (1) A person may challenge information entered by the Department of Financial Institutions into the Nationwide Mortgage Licensing System and Registry. A challenge must be made in writing to the Department and addressed to the attention of the Assistant Commissioner for the Compliance Division. The grounds for the challenge shall be limited to a review of the factual accuracy of the information regarding the person's record submitted to the Nationwide Mortgage Licensing System and Registry by the Department. A challenge shall be considered moot if the challenged information is no longer available in the Nationwide Mortgage Licensing System and Registry.
- (2) The challenge shall include the person's name, unique identifier, and a statement of the alleged inaccuracy of the information entered into the Nationwide Mortgage Licensing System and Registry. The challenge shall include available proof or corroboration that supports the person's challenge, including, but not limited to, certified copies of official documents or court orders.
- (3) Upon receipt of the challenge, the commissioner shall investigate the challenge, along with any information provided, and determine whether the challenged information entered into the Nationwide Mortgage Licensing System and Registry is factually accurate.
- (4) The commissioner shall notify the person of the determination within 60 days of the receipt of the written challenge.
- (5) If the commissioner determines that the information submitted to the Nationwide Mortgage Licensing System and Registry is factually inaccurate, the commissioner shall take prompt steps to correct the information submitted.
- (6) A person aggrieved by the commissioner's determination regarding a challenge may request a hearing on the question of whether the challenged information is factually accurate. The request for hearing must be in writing within 30 days of the commissioner's determination. If the hearing is timely requested, it shall be conducted under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, and the burden of proving that the challenged information is factually inaccurate is on the person aggrieved by the commissioner's decision regarding the challenge.

Authority: 12 U.S.C. § 5107(d)(4); T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-501(a)(1), and 45-13-504.
Administrative History: Original rule filed May 28, 2010; effective October 29, 2010.

(Rule 0180-17-.11, continued)

0180-17-.14 NOTIFICATION REQUIREMENTS.

- (1) In addition to the events set forth in T.C.A. § 45-13-108, a licensee shall, within fifteen (15) days of the occurrence of any of the following events, file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:
 - (a) The entry of a publicly available administrative order against the licensee by a state or federal regulatory agency, including, but not limited to, an emergency cease and desist order, an order to cease and desist, an order to pay civil penalties, and an order to make refunds.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-108(6). **Administrative History:** Original rule filed May 28, 2010; effective October 29, 2010.

0180-17-.15 PRESERVATION OF RECORDS.

All books and records required to be preserved by any regulation of the commissioner or required to be by any federal statute, regulation or regulatory guideline, as applicable to a licensed mortgage lender, mortgage loan broker, and mortgage loan servicer, shall be preserved and made available to the commissioner for twenty-five (25) months on all rejected applications and twenty-four (24) months on all loans paid in full.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206 and 45-13-207(a). **Administrative History:** Original rule filed May 28, 2010; effective October 29, 2010.

0180-17-.16 ANNUAL REPORT.

The annual report required under T.C.A. § 45-13-208(b) shall be in the form of and submitted on the date of the renewal application required under T.C.A. § 45-13-203(c). The annual report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and include the names of all directors, officers, general partners, and stockholders owning or controlling 25% or more of the outstanding capital stock of the licensee, any limited partner owning more than 25% of the partnership interest of the licensee, any changes among officers, directors, or general partners within the preceding year, and any change in principal place of business of the licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-203(c) and 45-13-208(b)-(c). **Administrative History:** Original rule filed May 28, 2010; effective October 29, 2010.