

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);
(5 Del.C. §§121(b), 2112, 2210(e), 2741, and 2906(e))
5 DE Admin. Code 2101, 2201, 2701 and 2901

FINAL

ORDER

2201 Operating Regulation

IT IS HEREBY ORDERED, this 7th day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB 286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

2201 Operating Regulation

5 Del.C. §2210(e)

Effective Date: December 11, 2014

1.0 Applicability of Chapter

1.1 5 Del.C. Ch. 22 applies only to consumer credit transactions, including but not limited to, extensions of credit secured by one to four family residential, owner-occupied property located in this State intended for personal, family, or household purposes.

1.2 5 Del.C. Ch. 22 does not apply to:

- 1.2.1 mortgage loans secured by any property of 25 acres or more;
- 1.2.2 mortgage loans intended for commercial purposes; and
- 1.2.3 lending that requires a license under 5 **Del.C.** Ch. 29, Financing the Sale of a Motor Vehicle.

2.0 Compliance with Applicable Laws

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 22, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations, as applicable.
- 2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 22 and the following regulations, if applicable:
 - 2.3.1 Regulation 101, Retention of Financial Institution Records;
 - 2.3.2 Regulation 2201, Operating Regulation;
 - 2.3.3 Regulation 2202, Minimum Records;
 - 2.3.4 Regulation 2203, Schedule of Charges;
 - 2.3.5 Regulation 2204, Surety Bond or Irrevocable Letter of Credit;
 - 2.3.6 Regulation 2205, Report of Delaware Loan Volume;
 - 2.3.7 Regulation 2206, Report of Delaware Assets;
 - 2.3.8 Regulation 2207, Exemption of Licensed Lenders;
 - 2.3.9 Regulations 2107/2208, Guidance on Non-traditional Mortgage Products;
 - 2.3.10 Regulation 2108/2209, Statement on Subprime Mortgage Lending;
 - 2.3.11 Regulation 2210, Short-Term Consumer Loans; and
 - 2.3.12 Regulation 2401, Mortgage Loan Originator Licensing.

3.0 Display of ~~License and~~ Payday Loan Notice

- 3.1 ~~Each licensed office open to the public shall prominently display its license issued under 5 **Del.C.** Ch. 22 in clear view of all customers.~~
- 3.2 Each licensed office open to the public that provides short-term consumer loans as defined in 5 **Del.C.** §2227 shall also prominently post the following statement in plain view in an area easily accessible to its customers at the entrance to the office: "A payday loan is not intended to meet long-term financial needs."

18 DE Reg. 472 (12/01/14)

4.0 Satisfaction of Mortgages and Other Security Interests

- 4.1 Upon full performance of a debt obligation or duty secured by a mortgage or a conveyance in the nature of a mortgage on real estate, a licensee holding such a mortgage or conveyance shall cause a proper record of its satisfaction or performance to be made within 60 days as required by 25 **Del.C.** Ch. 21.
- 4.2 A licensee shall take all necessary action to discharge, satisfy or release any other security interest for a loan under 5 **Del.C.** Ch. 22 within 30 days from the date that the loan is satisfied or fully performed.

5.0 Insurance

- 5.1 Credit Life and Health Insurance
 - 5.1.1 A licensee may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to Title 18 of the Delaware Code and all applicable Insurance Commissioner Regulations.
 - 5.1.2 Every licensee offering credit life and health insurance whose charges do not conform to those authorized by Title 18 of the Delaware Code shall maintain in each office a copy of a submission to the Insurance Commissioner requesting the non-conforming charges and the Insurance Commissioner's approval of those charges.
 - 5.1.3 Credit life insurance refunds shall be calculated as of the date of death except as permitted by 18 **Del.C.** §3705(b)(4).
 - 5.1.4 Credit health insurance payments received by a licensee shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue if payment is received after the payment due date.
- 5.2 A licensee may offer, but not require, only such other insurance products as the Commissioner may, upon written approval, permit.

- 5.3 Any licensee may require proof of insurance coverage for any loan secured by a motor vehicle, real estate, or other collateral. The borrower has the right to submit any existing policy(s) naming the licensee as beneficiary, provided such policy is acceptable to the licensee as to coverage, term and carrier. Upon notification to the licensee of cancellation of any policy, the licensee may place coverage to protect the licensee's interest. The borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. A licensee may, if requested by the borrower, place such insurance coverage as is necessary to protect the licensee's interest at the inception of the loan.
- 5.4 Any insurance authorized by this regulation, other than the insurance coverage authorized by §5.3 of this regulation, must be specifically requested by the borrower in writing. This request must be attached to, or part of, the loan application.

18 DE Reg. 472 (12/01/14)

6.0 Purchase or Sale of Loan Contracts

- 6.1 A licensee shall not sell, assign, or in any way transfer loan contracts to any person who is not licensed under 5 Del.C. Ch. 22 or licensed under a similar statute of another state, without the express written permission of the Commissioner.
- 6.2 Purchasers, assignees, and transferees shall be limited to collecting balances due under the existing contract terms and shall be bound by applicable Delaware laws regarding legal fees and usury statutes if a loan is subsequently refinanced.
- 6.3 This section shall not apply to:
- 6.3.1 the sale, assignment or transfer of loan contracts between licensees under the same management or control;
 - 6.3.2 the sale, assignment or transfer of a loan contract to an out-of-state affiliate of a licensee for collection or for the convenience of a borrower provided however that the out-of-state affiliate must be domiciled in the United States;
 - 6.3.3 the sale, assignment or transfer of a loan contract to any person secondarily liable on the contract; and
 - 6.3.4 the sale, assignment or transfer of a participation interest or an entire loan to a federal, state, or local government agency, or to a federal or state regulated bank, savings bank, mortgage banking company, insurance company or investment banking firm or their subsidiaries.

7.0 Origination of Mortgage Loans for Resale

Solely for the purposes of the loan limitation provisions contained in the last sentence of 5 Del.C. §2228(a), the term "loans" shall not be deemed to include loans secured by mortgages on real property located in this State (or secured by certificates of stock or other evidence of ownership interest in, or proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State) if such loans are originated by a licensee for resale and the licensee in fact sells, assigns or otherwise transfers the entire interest in the loan (except servicing, if servicing is retained) within 120 days following the date the loan is made. Upon written request, additional time may be granted at the discretion of the Commissioner.

8.0 Mortgage Loan Originators

- 8.1 Each licensee shall insure that every person who it employs, or is affiliated with it, as a mortgage loan originator, as defined by 5 Del.C. Ch. 24, to provide mortgage loan origination services has complied with all requirements of that Chapter and the regulations issued thereunder.
- 8.2 Each licensee shall promptly notify the Commissioner of the cessation of employment or termination of affiliation of any mortgage loan originator who had been providing residential mortgage loan origination services for the licensee.
- 8.3 The unique identifier issued by the Nationwide Mortgage Licensing System and Registry of the applicable mortgage loan originator shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual.

18 DE Reg. 472 (12/01/14)

9.0 Advertising

- 9.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 9.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.
- 9.3 A licensee shall not advertise any credit terms that are not actually available.

- 9.4 When a licensee advertises with respect to its services under 5 **Del.C.** Ch. 22, the advertisement may state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State under and may specify the license number and expiration date of the license.

18 DE Reg. 472 (12/01/14)

10.0 Internet Websites

- 10.1 If the licensee provides short-term consumer loans as defined in 5 **Del.C.** §2227, the home page shall prominently display the following statement: "A payday loan is not intended to meet long-term financial needs."
- 10.2 If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

18 DE Reg. 472 (12/01/14)

11.0 Reports

Each licensee who employs mortgage loan originators shall submit to the Nationwide Mortgage Licensing System and Registry such reports of condition at such time, in such form and containing such information as that System shall require.

12.0 Information Security

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers related to the business governed by this regulation including, but not limited to, all application information, account information, and information from any consumer report.

13.0 Repossession Policy

Each licensee shall comply in all respects with 6 **Del.C.** Article 9, Secured Transactions, Part 6, Default.

18 DE Reg. 472 (12/01/14)

14.0 License Applications

- 14.1 The Nationwide Mortgage Licensing System and Registry, as the multistate automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2213A, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 22 as to persons that employ, or have affiliated, a mortgage loan originator as defined by 5 **Del.C.** Ch. 24, and in that capacity, the System may, with respect to those persons:
- 14.1.1 process licensing applications;
 - 14.1.2 collect licensing payments;
 - 14.1.3 submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;
 - 14.1.4 receive information and maintain records related to applicants and licensees; and
 - 14.1.5 share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch 22.
- 14.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch 22 shall submit the appropriate application and fees to the Commissioner through the Nationwide Mortgage Licensing System and Registry when that person employs, or has affiliated, a mortgage loan originator as defined by 5 **Del.C.** Ch 24. All other persons shall submit applications for licenses under 5 **Del.C.** Ch 22 directly to the Commissioner.
- 14.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 14.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$250, the annual license fee of \$250, and, if applicable, the Nationwide Mortgage Licensing System and Registry processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Mortgage Licensing System and Registry processing fee and the investigation fee are non-refundable.

- 14.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 14.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 14.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

15.0 Examination Fees and Supervisory Assessments

- 15.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §§122 and 2210. The cost of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 15.2 The Commissioner shall assess each licensee a supervisory assessment fee which is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 15.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

16.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

2 DE Reg. 781 (11/01/98)

17 DE Reg. 994 (04/01/14)

20 DE Reg. 308 (10/01/16) (Final)