

230-RICR-40-10-2

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 40 – BANKING

SUBCHAPTER 10 – LENDING

PART 2 – Lenders, Loan Brokers, Small Loan Lenders, Third-Party Loan Servicers and Mortgage Loan Originators

2.1 Authority

This Part is promulgated in accordance with R.I. Gen. Laws Chapters 19-14, 19-14.1, 19-14.2, 19-14.10, 19-14.11 and R.I. Gen. Laws § 42-14-17.

2.2 Scope

This Part applies to all person and entities licensed or required to be licensed as Lenders, Loan Brokers, Small Loan Lenders, Third Party Loan Servicers and Mortgage Loan Originators pursuant to the provisions of R.I. Gen. Laws Chapters 19-14.1, 19-14.2, 19-14.10 and 19-14.11.

2.3 Purpose

The purpose of this Part is to set forth the standards to be followed by the licensees listed above.

2.4 Depository Institutions

Financial institutions, credit unions, and other insured-deposit-taking institutions which are authorized to do business in Rhode Island including one authorized to do business by operation of an interstate banking statute which allowed its original entry, are not considered lenders or loan brokers for purposes of R.I. Gen. Laws Chapter 19-14.1, nor are they considered third-party loan servicers for purposes of R.I. Gen. Laws Chapter 19-14.11. Subsidiaries and affiliates of financial institutions, credit unions, and other insured-deposit-taking institutions organized under the laws of the United States, which subsidiaries and affiliates are not financial institutions, credit unions, or otherwise exempt from licensure under R.I. Gen. Laws Chapters 19-14 and 19-14.1 are lenders or loan brokers for purposes of R.I. Gen. Laws Chapter 19-14.1.

2.5 Lenders, Loan Brokers, Third Party Loan Servicers and Small Loan Lender Requirements

- A. Application. All licensees shall make application for a license and all changes in Nationwide Multistate Licensing System (NMLS). Any changes to the information provided must be reported to the Department, within thirty (30) days through an NMLS filing.
- B. Capital. As provided in R.I. Gen. Laws § 19-14-5, each licensee which applied for and is granted a license after June 30, 1995 must maintain minimum net worth, as set forth in R.I. Gen. Laws § 19-14-5.
 - 1. Net worth shall be defined as the amount by which total assets exceed total liabilities, calculated in accordance with Generally Accepted Accounting Principles.
 - a. All licensees must prepare and maintain a financial statement, prepared at a minimum on a quarterly basis, which evidences compliance to applicable statutory net worth requirements.
 - b. All licensees must upload their prepared quarterly and annual financial statements under the Financial Statement Summary Section within the Nationwide Multistate Licensing System (“NMLS”). The financial statements must represent only the licensee’s financial position. Consolidated financial statements are not acceptable unless a separate stand-alone breakdown of the licensee’s financial statements is included in the uploaded statements.
- C. Bonds. In accordance with R.I. Gen. Laws § 19-14-6, each Lender, Loan Broker, Third Party Loan Servicer and Small Loan Lender must file bonds in the following amounts with its application and keep the bonds current throughout the period of licensure. The bond amounts for the initial license are:
 - 1. Lenders – Fifty thousand dollars (\$50,000.00)
 - 2. Loan Brokers – Twenty thousand dollars (\$20,000.00)
 - 3. Small Loan Lenders – Ten thousand dollars (\$10,000.00)
 - 4. Third Party Loan Servicers – Fifty thousand dollars (\$50,000.00)
- D. Qualified Individual or Branch Manager
 - 1. Any Lender or Loan Broker that lends or brokers any mortgage loan must appoint a person that holds a valid Rhode Island Mortgage Loan Originator (“MLO”) license as the Qualified Individual or Branch Manager designated to operate the licensed business.

- a. Lenders and Loan Brokers whose main office listed in NMLS is that of a headquarters where no licensable activity is conducted and whose address will not be held out to the public in any way, including on loan documents and advertising is not required to designate a Rhode Island licensed MLO as the Qualified Individual but must meet the requirements as stated in §§ 2.5(D)(3)(a) and (b) of this Part.
2. Any Small Loan Lender, and any Lender or Loan Broker whose filed business plan represents that it does not and will not engage in any mortgage lending, or brokering may appoint Qualified Individual(s) and/or Branch Manager(s) that do not hold a Rhode Island MLO license, but must meet the requirements as stated in §§ 2.5(D)(3)(a) and (b) of this Part.
3. Third Party Loan Servicers may appoint a Qualified Individual and/or Branch Manager that meets the following requirements:
 - a. Those Qualified Individual(s) and/or Branch Manager(s) must have at least five (5) years' experience in the type of business for which a license is being sought including, without limitation, employment, supervision, or independent work experience. Factors to be considered when assessing the quality of an individual's experience shall include the number complexity and types of transactions handled in relation to the type of license sought by the application.
 - b. The Department will consider experience for a lesser period than five (5) years depending on individual circumstances. Factors which the Department shall consider for such a lesser experience period include but are not limited to the individual's educational experience, the complexity of transactions in relation to the type of license sought by the application and the supervision and oversight over the manager or person designated to operate the licensed business by a person having at least five (5) years of qualified experience.
4. Managerial Oversight
 - a. The Qualified Individual or Branch Manager is required to oversee the operations of the licensee and require compliance with this Part and the statutes of this State by all Mortgage Loan Originators sponsored by the location.
 - b. The Qualified Individual or Branch Manager should be physically present at the licensed location the majority of operating hours and to personally oversee the operations of the licensee at that location.
 - c. If the proposed Qualified Individual or Branch Manager does not reside within a reasonable commuting distance of the licensee

operation and is therefore unable to be physically present at the licensed location for the majority of operating hours, the application should provide a complete explanation of how the managerial oversight criteria will be satisfied at the time of application.

- E. Net Branching. Net Branching is prohibited in Rhode Island.
1. A net branch arrangement is an arrangement in which a Rhode Island licensed person or entity enters into an agreement whereby its designated Branch Manager has the appearance of ownership of the licensee by, among other things, sharing in the profits and/or losses, establishing, leasing or renting the branch premises, entering into other contractual relationships with vendors such as telephones, utilities, and advertising, having control of a corporate checkbook, and/or exercising control of personnel through the power to hire or fire such individuals.
 2. An entity may be considered to be utilizing a net branch if the net branch agreement requires the Branch Manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the Branch Manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.
 3. A Branch Manager's compensation that is based upon the net profit of the branch is an acceptable branch compensation arrangement if the employer collects the revenue from the branch, pays the branch expenses including the compensation of all employees of the employer main and branch offices, and then pays the Branch Manager the remaining revenues, if any, as a commission. The distinction between an acceptable and unacceptable branch compensation plan is whether the licensee pays the expenses of the branch. If the licensee pays the expenses, the arrangement is acceptable. If, however, the expenses are paid by the Branch Manager from a personal or nonentity account (or by some third party), the arrangement is prohibited.
- F. Financial Responsibility. A licensee must demonstrate the financial responsibility of its Officers, Directors, Owners and designated Qualified Individuals and/or Branch Managers pursuant to R.I. Gen. Laws § 19-14-7 under the criteria set forth in section § 2.7 of this Part.
- G. Criminal Background Checks. All Officers, Directors, owners of ten percent (10%) or more, Qualified Individuals and Branch Managers that do not hold a current valid Rhode Island MLO license must provide a criminal background authorization as provided for in NMLS. The background will be evaluated as indicated in § 2.8 of this Part.
- H. Insurance Claim Agent

1. R.I. Gen. Laws §§ 5-38-26 and 27-5-3.3 require that each Lender and/or Third Party Loan Servicer designate an agent within Rhode Island whom the Lender and/or Third Party Loan Servicer has agreed may endorse insurance checks on the Lender and/or Third Party Loan Servicers behalf. Each Lender and/or Third Party Loan Servicer must provide a copy of such agreement including all contact information for the individual within Rhode Island at the time of application and must keep that information current during licensure.
 2. A Lender and/or a Third Party Loan Servicer that has not and will not be included as a loss payee on any insurance policy may be exempted from the provisions of R.I. Gen. Laws §§ 5-38-26 and 27-5-3.3. An applicant that wishes to obtain an exemption must clearly state in its business plan that it is not a loss payee on any insurance policy and must upload into NMLS a statement that it will not be designated as a loss payee on any insurance policy. A Lender and/or Third Party Loan Servicers that obtains an exemption should expect that compliance will be evaluated on examination.
- I. Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the voting stock or equity interests of a licensee requires notification to the Department fifteen (15) days after such a change in ownership. Notification shall be made in NMLS. With the notice of a change in ownership, the licensee shall submit information requested relating to the new owner(s) and new Directors, Officers and Managers, including names, addresses and personal background information. If the new owner(s) and new Directors, Officers and Managers have the financial responsibility, experience, character and general fitness as required of an applicant, the Department shall approve such change in control. The Department shall approve or deny such a change in control within thirty (30) days of receipt of all information the Department requires to be filed to make such a determination.
 - J. Advertising. Each licensee shall include in all advertisements disseminated primarily in Rhode Island using words substantially similar to "Rhode Island Licensed Lender," "Rhode Island Licensed Loan Broker," "Rhode Island Licensed Small Loan Lender" and/or "Rhode Island Licensed Third Party Loan Servicer," whichever is applicable.

2.6 Mortgage Loan Originators

- A. Application. All Rhode Island licensed Mortgage Loan Originators ("MLO") shall make application for a license and all changes in Nationwide Multistate Licensing System (NMLS). Any changes to the information provided must be reported to the Department, within thirty (30) days through an NMLS filing.

- B. Sponsorship. A MLO may not originate any loan in Rhode Island unless that MLO has an active sponsorship with a properly licensed lender or loan broker or an entity explicitly exempt from licensure under R.I. Gen. Laws Chapter 19-14.
- C. Net Branching. A MLO may not participate in a net branching arrangement as described in § 2.5 of this Part. Participation in such an arrangement may result in administrative action against the MLO including suspension or revocation and/or forfeiture of interest, fees and charges.
- D. Criminal Backgrounds. All applicants for an MLO must provide a criminal background check authorization as provided for in NMLS. The background will be evaluated as indicated in § 2.8 of this Part.
 - 1. Registered Mortgage Loan Originators, as defined by R.I. Gen. Laws § 19-14.10-3, are subject to that statute and not this Part.
- E. Financial Responsibility. An applicant for a MLO License must demonstrate financial responsibility pursuant to R.I. Gen. Laws § 19-14.10-6(3) and as provided in § 2.7 of this Part.
- F. Bonds. The responsibility of a MLO to be covered by a surety bond in accordance with R.I. Gen. Laws § 19-14.10-14 is satisfied if the MLO is an employee of a licensee that posts and maintains a bond in accordance with § 2.5(C) of this Part and R.I. Gen. Laws § 19-14-6.

2.7 Financial Responsibility

- A. The Division will evaluate the financial responsibility required by R.I. Gen. Laws §§ 19-14-7 and 19-14.10-6 under the following standards. A determination that an individual has not shown financial responsibility may include, but not be limited to:
 - 1. Current outstanding judgments, except judgments solely as a result of medical expenses;
 - 2. Current outstanding tax liens or other government liens and filings;
 - 3. Foreclosures within the past three (3) years;
 - 4. A pattern of seriously delinquent accounts within the past three (3) years. Factors that will be considered in determining whether accounts are seriously delinquent include:
 - a. A pattern of delinquent child support payments
 - b. Outstanding collection accounts
 - c. Accounts that are ninety (90) days or more past due.

B. An applicant who has any of the criteria listed above in his or her background should provide, at the time of initial application, a full description and supporting documentation of the underlying facts and circumstances and the actions taken to rectify the situation. The applicant should identify and explain any of the debts that are related solely to medical debt. The following types of documents should be provided, if applicable:

1. Narrative explaining the circumstances which surround the adverse item reported
2. Satisfaction of judgment
3. Bankruptcy discharge order or dismissal
4. Bankruptcy schedules
5. Satisfaction of tax or other governmental lien
6. Letters or agreements establishing a repayment plan
7. Account statements, receipts, bank statements, cancelled checks or other documentation which establishes the balance due, and the date and the amount of payments
8. Explanations concerning an ongoing settlement negotiation or dispute between the individual and creditor or creditor's assignee

C. After review of these items, the Department will make a determination as to whether a person meets the financial responsibility requirement. To make this determination, the Department may consider the following factors:

1. Whether the individual has provided complete information as requested by the Department
2. The number of delinquent accounts, collection accounts, judgments, liens and charged off items
3. The amount of any delinquent accounts, collection accounts, judgments, liens and charged off items
4. The age of any delinquent accounts, collection accounts, judgments, liens and charged off items
5. Any viable repayment agreements with creditors or creditor's assignees concerning delinquent accounts, collection accounts, judgments, liens and charged off items

6. Good faith negotiation and repayment plans concerning any past due tax liability or failure to make payments pursuant to a repayment plan negotiated with a creditor or governmental tax agency
 7. With regard to bankruptcies the Division will consider the circumstances which led to the bankruptcy, the length of time since a discharge in bankruptcy and whether the person has been using credit responsibly since receiving the discharge. For Chapter 13 the Division will examine whether the individual is making the payments required by his or her Chapter 13 bankruptcy plan.
- D. If the Division denies an application on the basis that the Applicant or an Officer, Director, Owner, Manager or Control Person of the Applicant is not financially responsible, the Applicant will be notified of the reason for the denial. The Applicant may make written demand upon the department within thirty (30) days for a hearing to determine the reasonableness of the action. The hearing shall be conducted in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9.

2.8 Criminal Backgrounds

- A. Pursuant to R.I. Gen. Laws § 19-14.10-6 and the SAFE Act (the Secure and Fair Enforcement for Mortgage Licensing Act, comprising §§ 1501-1517 of the Housing and Economic Recovery Act of 2008, Pub. Law 110-289), an applicant is not eligible for licensure if he or she has been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court:
1. During the seven (7) year period preceding the date of the application for licensing and registration; or
 2. At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
- B. For all other arrests and convictions which appear on an applicant's criminal background the applicant should provide a full explanation and all supporting documentation (including the charging documents and the documents evidencing the terms of a plea agreement or conviction after trial).
- C. Aggravating factors which may be considered in the denial of the application for license or renewal include, but are not limited to:
1. Prior disciplinary history;
 2. Number of violations;
 3. Pattern of similar violations;
 4. Significant harm to victim or community;

5. Refusal, delay, or inadequate explanation of facts and circumstances at issue;
6. Evidence of willfulness or intentional commission of offense;
7. Evidence of gross negligence;
8. Refusal to acknowledge violation or take responsibility for offense;
9. Lack of cooperation with investigation;
10. Submission of false statements or evidence, or other deceptive practices;
11. Intimidation of or threats to witnesses or others involved with the investigation.

D. Mitigating factors which may be considered in the denial of the application for license or renewal include, but are not limited to:

1. Length of time since the date of violation;
2. No prior disciplinary history;
3. No other complaints, arrests, charges, or offenses currently pending against licensee/Applicant;
4. No pattern of similar offenses;
5. No evidence that the arrest, charge, offense, or conviction was willful or intentional;
6. No evidence that the arrest, charge, offense, or conviction was grossly negligent;
7. Age, position, and/or license at time of arrest, charge, offense, or conviction;
8. Evidence of rehabilitation since arrest, charge, offense, or conviction;
 - a. Cooperation with investigation;
 - b. Little or no harm to public;
 - c. Timely mitigation or restitution;
 - d. Understanding, acknowledgment, and remorse for arrest, charge, offense, or conviction;

- e. Reasonable explanation that is not contradicted by other witnesses or evidence;
 - f. Personal problems at time of arrest, charge, offense, or conviction that have been addressed;
 - g. Arrest, charge, offense, or conviction are not related to position or license sought.
- E. Pardon or expungement of a conviction shall not be a conviction for purposes of this Part.
- F. Upon review and evaluation of all information, the Department may deny the application for license or renewal application, grant the application for license or renewal application without conditions, or grant the application for license or renewal application with conditions.
- G. If the Division denies an application on the basis of the Applicant or an Officer, Director, Owner, Manager or Control Persons' criminal background, the Applicant will be notified of the reason for the denial. The Applicant may make written demand upon the department within thirty (30) days for a hearing to determine the reasonableness of the action. The hearing shall be conducted in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9.

2.9 Books Accounts and Records

- A. Each Lender, Loan Broker, Small Loan Lender and Third Party Loan Servicer must document and maintain a record of all actions taken, from the original point of contact (i.e. solicitation calls, application filing, onboarding date of loan service etc.) to the final disposition of each financing request received or loan serviced, and shall maintain at a minimum, the following records:
 - 1. For each customer:
 - a. The address of the office where the application was received for any licensee which maintains more than one (1) location
 - b. A copy of the following documents:
 - (1) The loan application
 - (2) The loan note
 - (3) All documents, correspondence and account activity for each loan serviced including but not limited to all attempted and/or completed contacts with each consumer
 - (4) All required TILA-RESPA Integrated Disclosures

- (5) Title waiver forms pursuant to R.I. Gen. Laws §§ 19-9-5 and 19-9-6
 - (6) Adverse action, where applicable
 - (7) Signed rate lock agreements, where applicable, with lender rate lock confirmation
 - (8) Copies of mortgage documents containing fee disclosures required by statute
 - (9) Date the application was considered complete for purposes of Federal Regulation B
- c. A loan log which contains, at a minimum, the name of the Applicant, the date the application was received, the date the application was approved, withdrawn or denied, and the date the loan closed.
2. The above documents and other records must be kept on file for a minimum of three (3) years from the application date for Loan Brokers and a minimum of three (3) years from the date a loan is paid in full, sold or transferred to another servicer for Lenders, Small Loan Lenders and Third Party Loan Servicers.
 3. A complete list of all loans brokered, funded or serviced from the date of the later of the last Division of Banking examination or the date of licensing.
 4. Any licensee that is located outside of the United States, must upload into the NMLS a signed, notarized statement that the licensee agrees that all records necessary for examination will be housed in the United States or will be provided to the Department for the purpose of conducting examinations and/or investigations.

2.10 Remote Work Locations

- A. Employees of a licensee may perform services for the licensee or act as a Mortgage Loan Originator from a remote location subject to the following requirements:
1. The employee is subject to the supervision of the licensee;
 2. The remote location is the employee's residence or other location identified in the records of the licensee and is within a reasonable distance of a place of business named in the licensee's license or branch certificate;

3. The licensee has written policies and procedures for the supervision of employees and employs appropriate risk-based monitoring and oversight processes of work performed by employees working from remote locations;
 4. Access to licensee's computer platforms and to customer information is in accordance with the licensee's comprehensive written information security plan;
 5. No in-person customer interaction occurs at a remote location and the licensee will not designate the remote location to consumers or customers as a business location;
 6. Physical records related to the licensee's business, including consumer information, are not maintained at the remote location;
 7. The licensee must ensure consumer and licensee information and records remain accessible and available for regulatory oversight and exams; and
 8. The licensee must provide training to keep all conversations about, and with, consumers conducted from a remote location confidential as if conducted from a licensed commercial location, and to ensure remote employees work in an environment conducive and appropriate to that privacy.
- B. A remote location shall not be considered a branch of the licensee, however, activities conducted at remote location shall be subject to examination under R.I. Gen. Laws Chapters 19-14 and 19-14.10.

2.11 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

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TITLE 230 - DEPARTMENT OF BUSINESS REGULATION (INCLUDES THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER)

CHAPTER 40 - BANKING

SUBCHAPTER 10 - LENDING

PART 2 - LENDERS, LOAN BROKERS, SMALL LOAN LENDERS, THIRD-PARTY LOAN SERVICERS AND MORTGAGE LOAN ORIGINATORS

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