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## Mortgage Laws and Regulations - South Carolina

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### Introduction

LegalEase was asked to review and summarize any legislation since January of 2007 (including pending legislation) affecting the mortgage industry in South Carolina in the following areas:

#### I. MORTGAGE ORIGINATION

##### 1. Pending legislation since January of 2007

i) 2007 Bill Tracking SC H.B. 4066

DATE OF INTRODUCTION: MAY 15, 2007  
LAST ACTION: MAY 15, 2007  
STATUS: To HOUSE Committee on JUDICIARY.

SYNOPSIS: Relates to prerequisites of recording an instrument in writing; requires that a mortgage be acknowledged in writing by an attorney before it may be recorded.

Highlights of the bill:

- Amends section 30-5-30, Code of laws of South Carolina, 1976
- Relates to prerequisites of recording an instrument in writing, so as to require that a mortgage be acknowledged in writing by a South Carolina attorney before it may be recorded.
- Takes effect upon approval by the Governor.
- Applies to all mortgages offered for recording after that date.

ii) 2007 Bill Tracking SC H.B. 5133

DATE OF INTRODUCTION: MAY 7, 2007  
LAST ACTION: MAY 7, 2007

STATUS: To HOUSE Committee on INVITATIONS AND MEMORIAL RESOLUTIONS.

SYNOPSIS: Relates to the Homeowners Protection Act; provides for termination or cancellation of the mortgage insurance coverage requirement of a mortgage at a certain valuation of the subject home.

Highlights of the bill:

- A House resolution to urge the United States congress to amend the Homeowners Protection Act of 1998 so as to provide for termination or cancellation of the mortgage insurance coverage requirement of a mortgage at a certain valuation of the subject home.
- The text of the Bill is as follows:

Whereas, the Homeowners Protection Act of 1998 is a Federal law designed to protect people who buy homes using private mortgage insurance; and

Whereas, the Homeowners Protection Act of 1998 expressly supersedes any provisions of law of any State enacted after July 29, 2000, relating to requirements for cancellation or termination of private mortgage insurance; and

Whereas, in some circumstances, mortgagors improve the property securing their mortgage loan, to the extent that the principal balance of the mortgage loan reaches or falls below eighty percent of the current value of the property securing the loan; and

Whereas, the Homeowners Protection Act of 1998 does not provide for termination of the private mortgage insurance requirement of a mortgage based on the principal balance of the mortgage loan reaching or falling below eighty percent of the original or current value of the property securing the loan. Now, therefore,

Be it resolved by the House of Representatives:

That the members of the South Carolina House of Representatives, by this resolution, urge the United States Congress to examine the possibility of amending the Homeowners Protection Act of 1998 to provide for termination or cancellation of the private mortgage insurance requirement of a mortgage at the time the mortgagor provides evidence to the servicer, mortgagee, or mortgage insurer establishing that the principal balance of the mortgage loan has reached or fallen below eighty percent of the current value of the property securing the loan.

Be it further resolved that a copy of this resolution be forwarded to the President of the United States, the United States Senate and House of Representatives, and the members of the South Carolina Congressional Delegation.

## 2. Legislation since January of 2007

There is no new legislation since January of 2007.

## II. MORTGAGE LICENSING

### 1. Pending legislation since January of 2007

#### i) 2007 Bill Tracking SC S.B. 1090

DATE OF INTRODUCTION: FEBRUARY 12, 2008

LAST ACTION: APRIL 30, 2008

STATUS: To HOUSE Committee on LABOR, COMMERCE AND INDUSTRY.

**SYNOPSIS:** Enacts the Mortgage Lending Act; requires the licensing of a mortgage lender, loan officer, limited loan officer, or someone acting as a mortgage lender; provides definitions; establishes qualifications for licensure and grounds for revocation, suspension, renewal, and termination; describes prohibited activities; provides for record-keeping.

Highlights of the bill:

- Amends the Code of laws of South Carolina, 1976, so as to enact "the South Carolina Mortgage Lending Act", by adding Chapter 22 to Title 37 so as to require the licensing of a mortgage lender, loan officer, limited loan officer, or someone acting as a mortgage lender.
- Provide definitions.
- Establishes qualifications for licensure and grounds for revocation, suspension, renewal, and termination.
- Describes prohibited activities.
- Provides for record-keeping, trust and escrow accounts, and annual reports.
- Provides for the felony offense of mortgage fraud and penalties.
- Provides for enforcement otherwise through the department of consumer affairs and through criminal penalties.
- Amends sections 37-1-301, 37-3-501, and 37-23-20, all relating to definitions in connection with mortgage lending and brokering and high-cost and consumer home loans, so as to conform definitions, and to add a definition for "adjustable rate mortgage".
- Amends sections 37-23-40, 37-23-45, and 37-23-75, all relating to protections for the borrower in a high-cost or consumer home loan transaction, so as to require certain disclosures in connection with an adjustable rate mortgage.

- Amends Chapter 58 of Title 40, relating to the registration of mortgage loan brokers, so as to change the registration requirements to licensing requirements, to redefine "mortgage broker", "exempt organization", "residential real property", inter alia, and to add new definitions, including "branch office", "pattern of residential mortgage fraud", "tablefunding", and others.
- Requires certain professional courses, an additional year of experience, and a fingerprint check for mortgage brokers and mortgage originators.
- Requires certain records be kept and made accessible.
- Adds certain prohibitions in connection with a real estate appraisal.
- Requires and prescribes mortgage broker agreements.
- Authorizes enforcement by the department of consumer affairs, and prescribe administrative penalties including fines and injunctions and criminal penalties.
- Requires certain reports and filings.
- Provides for the felony offense of mortgage fraud and penalties.
- The amended sections would read as follows:

Section 40-58-20

(3) 'Mortgage broker' means a person or organization in the business of soliciting, processing, placing, or negotiating mortgages for others or offering to process, place, or negotiate mortgages for others or engaging in tablefunding of mortgages or as a loan correspondent, as that term is defined by 24 CFR part 202 et seq., whether those acts are done by telephone, electronic means, mail, or in person with the borrower or potential borrower. Mortgage broker also includes a person or organization who brings borrowers or lenders together to obtain mortgages or renders a settlement service as described 12 USC 2602(3) and 24 CFR Part 3500.2(B).

Section 40-58-20

(5)'Exempt person or organization' means:

(A) An agency of the federal government or a state government granting mortgage loans under specific authority of the laws of a state or the united states;

(B) Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(C) A person authorized to engage in business as a bank or a wholly owned subsidiary

of a bank, a farm credit system, savings institution or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the united states, this state, or another state. Except for Sections 40-58-70, 40-58-130 and 40-58-140, this chapter does not apply to the exempt persons set forth in this subitem;

(D) An officer or employee of an exempt person described in subitem (C) of this item when acting in the scope of employment for the exempt person.

Section 40-58-20

(15) 'Branch manager' means an individual who is in charge of and who is responsible for the business operations of a branch office of a mortgage broker.

(16) 'Branch office' means an office or location of the mortgage broker licensee which is separate and distinct from the licensee's principal or main office and at which a mortgage broker may conduct mortgage broker business, that is open during regular business hours and is required to be staffed full time by one or more originator licensees who have the authority to contract on behalf of the broker and to accept service on behalf of the broker.

(17) 'Control' means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. a person that (i) is a director, general partner or executive officer; (ii) directly or indirectly has the right to vote ten percent or more of a class of a voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities; (iii) in the case of an LLC, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that company.

(18) 'Employee' means an individual who has an employment relationship acknowledged by both the individual and the mortgage broker, and is treated as an employee for purposes of compliance with the federal income tax laws.

(19) 'Exclusive mortgage broker' means an individual who acts as a mortgage broker exclusively for a single mortgage lender or single exempt person and who is licensed under the provisions of Section 40-58-50(C).

(20) 'Financial services or financial services related' means pertaining to securities, commodities, banking, insurance, consumer lending, or real estate including, but not limited to; acting as or being associated with a bank or savings association, credit union, mortgage lender, mortgage servicer, mortgage broker, real estate broker, real estate salesperson or agent, closing agent, title company, or escrow agent.

(21) 'Managing principal' means a person who meets the requirements of Section 40-58-50(b) and who agrees to be primarily responsible for the operations of a licensed mortgage broker in this state.

(22) 'Pattern of residential mortgage fraud' means one or more misstatements, misrepresentations, or omissions made during the mortgage lending process that involve two or more residential properties, which have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics.

(23) 'Tablefunding' means a transaction in which a licensee closes a loan in its own name with funds provided by others.

#### Section 40-58-30(B)

It is unlawful for a person to employ, to compensate, or to appoint as its agent an originator unless the originator is licensed pursuant to this chapter. The license of an originator is not effective during any period when that person is not employed by a mortgage broker licensed pursuant to this chapter. When an originator ceases to be employed by a licensed mortgage broker, the originator and the mortgage broker by whom that person was employed shall promptly notify the department in writing. The mortgage broker's notice must include a statement of the specific reason or reasons for the termination of the loan originator's employment. An originator must not be employed simultaneously by more than one mortgage broker. If a licensed originator changes employment, a new license must be issued and a fee of twenty-five dollars must be paid for issuance of the new license.

#### Section 40-58-40.

A person or organization may not offer or agree to offer mortgage brokerage services in this State without first depositing and continuously maintaining a bond in the amount of twenty-five thousand dollars executed by a surety company authorized by the laws of this State to transact business within this State. Continuously maintaining a bond may be considered evidence of financial responsibility for a person or organization that offers or agrees to offer mortgage brokerage services. The bond must be executed to the State of South Carolina and must be for the use of the State and for any consumers who may have a cause of action against the mortgage broker, after notice and opportunity for hearing before the administrative law court. The license of a licensee is void upon the termination of the bond by the surety company unless a new bond is filed with the department before the termination.

#### Section 40-58-50.

(B)(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the department and the descriptions of the business activities, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national and state criminal history records check and a set of the applicant's fingerprints in a form acceptable to the department. The application must be accompanied by a nonrefundable fee, payable to the department, of five hundred fifty dollars, in addition to the actual cost of obtaining national and state criminal history record checks by the Federal Bureau of Investigation (FBI) and the South Carolina Law



Enforcement Division (SLED). Using the information supplied by the administrator to sled, the applicant must undergo a state criminal records check, supported by fingerprints, by sled, and a national criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. The South Carolina law enforcement division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable State and Federal guidelines. Additionally, the applicant must have completed satisfactorily, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the administrator. The course must consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the administrator or possess residential mortgage lending education or experience in residential mortgage lending transactions that the administrator considers equivalent to the course. In addition, the applicant must complete satisfactorily a written examination approved by the administrator. The administrator may waive portions of the examination based upon satisfactory evidence to the administrator that an applicant has acquired a professional certification or accreditation that indicates mastery of the subject matter.

(B)(2) An applicant for a mortgage broker's license must have at least three years' experience in residential mortgage lending or brokering or other experience or competency requirements the department may impose before an initial license is issued.

(B)(2)(a) In lieu of a showing of three years' experience, an applicant may show proof of three years' employment with a federally insured depository institution, or a VA, FHA, or HUD approved mortgagee during which the applicant was actively engaged in originating residential mortgages. If the applicant is a partnership, Limited Liability Company (LLC), or Corporation, at least one partner, member /manager, or principal officer shall have the experience required for the applicant. Each applicant shall identify the person meeting the experience requirement to serve as the applicant's managing principal. The managing principal shall operate the business under his full charge, control, and supervision and is required to complete the education and testing requirements for the mortgage broker licensee. The managing principal also may serve as the branch manager of a licensee branch office. Each main branch and branch office of a mortgage broker licensed pursuant to this chapter must have a branch manager who meets the experience requirements of Section 40-58-50(b)(2). The mortgage broker licensee must designate a managing principal in writing and notify the department of any changes in managing principal.

(B)(2)(b) Instead of one of the required year's experience, an applicant may show proof of the equivalent of six or more semester hours of satisfactorily completed course work in real estate finance, real estate law, or similar course work counting toward the successful completion of a degree that is baccalaureate level or more advanced with a major or minor in finance, accounting, business administration, real estate finance economics, or similar baccalaureate or more advanced degree, approved by the

administrator or the administrator's designee, from an accredited college or university.

(C) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure pursuant to this section but does not meet the requirements of Subsection (b)(2) of this Section, the individual applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following, in addition to otherwise complying with this chapter:

(1) successfully complete both a residential mortgage-lending course approved by the administrator of not less than forty hours of classroom instruction and a written examination approved by the administrator;

(2) act exclusively as a mortgage broker for a single mortgage lender licensee or single exempt mortgage lender for whom the broker is considered an agent, who is responsible for supervising the broker as required by this chapter, who signs the license application of the applicant, and who is jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities;

(3) is compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered; and

(4) does not handle borrower or third-party funds in connection with the brokering or closing of mortgage loans.

(D) The application for an originator license must designate the employing mortgage broker and must include descriptions of the business activities, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national and state criminal history records check and a set of the applicant's fingerprints in a form acceptable to the department. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining national and state criminal history record checks by the FBI and SLED. Using the information supplied by the administrator to SLED, the applicant must undergo a State Criminal Records check, supported by fingerprints, by sled, and a national criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable State and Federal guidelines. Additionally, the applicant must have completed satisfactorily, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the administrator. The course must consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the administrator or possess residential mortgage lending education or experience in residential mortgage lending transactions that the administrator considers equivalent to



the course. In addition, the applicant must complete satisfactorily a written examination approved by the administrator. The administrator may waive portions of the examination based upon satisfactory evidence to the administrator that an applicant has acquired a professional certification or accreditation that indicates mastery of the subject matter.

Section 40-58-65

(A)(1) A mortgage broker licensed pursuant to this chapter must maintain at his usual place of business books, records, and documents pertaining to the business conducted, to enable the department to determine compliance with this chapter, and shall include a mortgage log that identifies the borrower, including credit score, the property, loan terms, the loan originator, the appraiser, the closing agent, the broker, and the lender. to assist the administrator in identifying possible discriminatory mortgage lending patterns, each licensee shall submit his mortgage LOG data and the data identified in 12 CFR Part 203 ET SEQ., In a form determined by the administrator by March thirty-first of each year. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions, after notification and right to cure. Data collected by the administrator pursuant to this section is confidential and may be released only in composite form. The administrator shall prepare and make available to the public a report based on the above data. The report must be available by June thirtieth of each year. The mortgage log must be completed with information known at the time of review by the department and must include loans in process, closed loans, turndowns, and withdrawals. A mortgage broker with two or more licensed offices may consolidate the records at any one of the licensed offices so long as the administrator is notified of the location of the records. The records must be available for examination to the administrator or his designee upon request. Books and records must be maintained for at least three years. A licensee's records may be maintained electronically, if approved by the administrator, so long as they are readily accessible for examination by the administrator.

(C) A licensed mortgage broker with an official place of business within South Carolina also may maintain one or more branch or satellite offices if the:

(1) mortgage broker notifies the department in writing seven days before the opening of a branch or satellite office of the location of the branch or satellite office, the branch manager for each branch location, and that all records from the branch or satellite office are stored in a main or branch location in this State which is staffed by one or more licensees during regular business hours;

(2) records of any pending mortgage application or records in which a loan closing is still in process from a satellite office are made available at the mortgage broker's main or branch location as provided in item (1) to the administrator within seven business days of a written request delivered by facsimile transmission, mail, or hand-delivery by the administrator;

(3) broker notifies the department in writing within seven business days of closing a

branch or satellite office;

(4) mortgage broker licensee is responsible and accountable for the activities of all licensed locations, branch managers, and loan originators. Compliance reviews must include examination of all facts and circumstances of branch operations to ensure this responsibility and accountability.

(D) The department may examine the books and records of a mortgage broker and other specified documents to determine whether there has been substantial compliance with this chapter. Unless there is reason to believe a violation of this chapter has occurred, examinations must be limited to one each year. Records and information obtained by the department during an examination are confidential and the department must certify that it is in compliance with the Right to Financial Privacy Act (RFPA). The department may cooperate and share information with an agency of this state, other states, or the federal government. The department may accept or participate in examinations conducted by one of these agencies instead of an examination.

(E) If the mortgage broker fails to notify the department of the existence or closing of a branch or satellite office, the actual operating hours of the main or branch offices where records are kept, or the whereabouts of its records, the broker is subject to penalties as set forth in Section 40-58-80.

(F) A mortgage broker licensee who ceases doing business in this state must notify the administrator at least seven days in advance. The notification must include a withdrawal plan that includes a timetable for disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records.

(G) A mortgage broker licensee should develop, maintain, and test disaster recovery plans for all records that are maintained.

Section 40-58-67 (E) The administrator shall require education providers of the fundamentals mortgage lending course required pursuant to section 40-58-50 and the continuing education courses required pursuant to this section to file information regarding the contents and materials of proposed courses to satisfy the education requirements with the administrator for review and approval. All course approvals expire annually and must be reviewed by the department. The administrator shall set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials may not exceed five hundred dollars and the fee for continued review may not exceed two hundred fifty dollars each year for each course offered.

Section 40-58-70.

In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person in the course of any mortgage loan transaction to:

(6) Influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. this item does not prohibit a mortgage broker or mortgage lender from asking the appraiser to do one or more of the following:

(A) Consider additional appropriate property information;

(B) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report;

(7) Fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:

(A) Requested from the third party in writing by the mortgage broker or an employee of the mortgage broker; and

(B) Performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender; or

(8) Use any trade name or insignia of membership in any organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, any business card, stationary, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.

#### Section 40-58-75 (D)

A mortgage broker agreement must be in writing and include the current name, address, and telephone number of the mortgage broker's branch office, the account number, if any, the date of the agreement, the name of the borrower or proposed borrower, signature of the borrower and mortgage broker, the amount of any fees, and the nature of services provided to the borrower. A copy of the completed agreement must be provided to the borrower by the mortgage broker. The mortgage broker agreement may provide for a signed acknowledgement by the borrower of receipt of a copy of the agreement. If a mortgage broker co-brokers mortgage loans, the mortgage broker agreement must contain a statement advising the applicant that the loan may be co-brokered. within three days of making a final decision to co-broker a loan, the broker must provide the applicant with written notice of co-brokering, including the name and street and mailing address of the co-broker as well as which broker is to be contacted regarding progress of the mortgage brokers' services provided to the applicant. Each broker in a co-brokering arrangement must be licensed with the department.

#### Section 40-58-80.

(A) The administrator, by order, may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant pursuant to this chapter or may restrict or limit the activities relating to mortgage loans of a licensee or a person who owns an interest in or participates in the business of a licensee, if the administrator finds that both:

(1) The order is in the public interest; and

(2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee. the person:

(a) has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;

(b) has violated or failed to comply with any provision of this chapter or order of the administrator;

(c) has been convicted of a felony, or, within the past ten years, has been convicted of a misdemeanor involving financial services or financial services related business, or an offense involving breach of trust or fraudulent or dishonest dealing;

(d) is enjoined permanently or temporarily by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving the financial services or financial services related business;

(e) is the subject of an order of the administrator denying, suspending, or revoking that person's license;

(f) is the subject of an order entered within the past ten years by the authority of a state with jurisdiction over that State's financial services or financial services related industry denying or revoking that person's license;

(g) does not meet the qualifications or the financial responsibility, character, or general fitness requirements of section 40-58-50 or bond or capital requirements pursuant to this chapter;

(h) has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business who has been subject to an order or injunction described in subitem (d),(e), or (f) of this item;

(i) has failed to pay the proper filing or renewal fee pursuant to this chapter or any fine or fee imposed by any State or Federal regulatory authority. However, the administrator may enter only a denial order pursuant to this subitem, and the administrator shall vacate the order when the deficiency is corrected; or

(j) has falsely certified attendance or completion of hours at an approved education course.

(B) The administrator, by order, summarily may postpone or suspend the license of a licensee pending final determination of a proceeding pursuant to this section. Upon entering the order, the administrator shall notify promptly the applicant or licensee that the order has been entered, the reasons for the order, and the procedure for requesting a hearing before the administrative law court. If a licensee does not request a hearing and the administrator does not request a hearing, the order remains in effect until it is modified or vacated by the administrator.

(C) The administrator, by order, may impose a civil penalty upon a licensee or any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for a violation of this chapter. The civil penalty may not exceed ten thousand dollars for each violation. The administrator may impose a civil penalty that may not exceed ten thousand dollars for each violation of this chapter by a person other than a licensee or exempt person.

(D) In addition to other powers pursuant to this chapter, upon finding that an action of a person is in violation of this chapter, the administrator may order the person to cease and desist from the prohibited action. If the person subject to the order fails to appeal the order of the administrator in accordance with Section 40-58-90, or if the person appeals and the appeal is denied or dismissed, and the person continues to engage in the prohibited action in violation of the administrator's order, the person is subject to a civil penalty that may not exceed twenty-five thousand dollars for each violation of the administrator's order. The penalty provision of this section is in addition to and not instead of another provision of law for failure to comply with an order of the administrator.

(E) Unless otherwise provided, all actions and hearings pursuant to this chapter are governed by the Administrative Procedures Act, Section 1-23-310 et seq.

(F) When a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the administrator, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the administrator.

(G) If the administrator has reasonable grounds to believe that a licensee or other person has violated this chapter or that facts exist that would be the basis for an order against a licensee or other person, the administrator, either personally or by a person duly designated by the administrator, at any time may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. The administrator may require the licensee or other person to submit a consent to a national

and state fingerprint-based criminal history record check and a set of that person's fingerprints in a form acceptable to the administrator in connection with an examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints is grounds for disciplinary action. The reasonable cost of this investigation or examination must be charged against the licensee.

(H) The administrator may subpoena documents and witnesses, and compel their production and attendance, to examine under oath all persons whose testimony the administrator considers relative to the person's business, and require the production of books, papers, or other materials.

(I) The administrator, at the expense of the administrator's office, may conduct routine examinations of the books and records of a licensee in order to determine compliance with this chapter.

(J) In addition to the authority described in this section, the administrator may require a licensee to pay to a borrower or other individual amounts received by the licensee or its employees in violation of this chapter.

(K) If the administrator finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in, any activity that results in the entry of an order suspending or withdrawing the license of a licensee, the administrator may prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for the period of time the administrator considers necessary.

(L) A person who violates a provision of this chapter other than Section 40-58-140 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each offense. Each violation is considered a separate offense.

Section 40-58-90.

(A) A person who has exhausted all administrative remedies available before the administrator and who is aggrieved by the administrator's determination is entitled to a contested case hearing before the administrative law court as provided in Section 1-23-600(d) and judicial review as provided in Sections 1-23-380(b) and 1-23-610. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the administrative law court is reviewable immediately if review of the final decision of the administrative law court would not provide an adequate remedy.

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the administrative law court according to the rules of procedure of the administrative law court. Copies of the request for a contested case hearing must be



served upon the administrator and all parties of record. The final decision of the administrative law judge may be appealed as provided in Sections 1-23-380 and 1-23-610.

Section 40-58-100.

The department may promulgate regulations necessary to effectuate the purposes of this chapter.

Section 40-58-110.

(A)(1) In addition to the initial nonrefundable license application fee of five hundred fifty dollars required by Section 40-58-50, first time mortgage broker licensees also shall pay a one-time, nonrefundable processing fee of two hundred dollars. Thereafter, a mortgage broker licensee shall pay an annual nonrefundable renewal fee of five hundred fifty dollars. A mortgage broker licensee shall pay an initial nonrefundable fee of one hundred fifty dollars and, thereafter, a nonrefundable renewal fee of one hundred fifty dollars for each branch or satellite location.

(2) The initial nonrefundable license fee is fifty dollars for an originator license, and fifty dollars, nonrefundable, for a renewal license. In addition, all licensees must pay the cost of obtaining national and state criminal history record checks as the department may require. The broker shall notify the department in writing ten days before opening a new location or changing the address of a licensed location. A fee of twenty-five dollars is required when the licensee notifies the department of a change in address for a licensed location.

(B)(1) The term of each license is one year. Licenses issued under this chapter expire on December thirty-first annually following issuance or another date that the department may determine and must be renewed in accordance with the provisions of this section.

(2) The renewal period for all licensees is from November first through December first annually or on any other dates that the department may determine.

(3) Applications received after December first or any other date the department may determine are deemed late and late fees below apply.

(C) If a license of a licensed mortgage broker is not renewed before the dates in subsection (B), two hundred fifty dollars in addition to the renewal fee pursuant to subsection (A) must be assessed as a late fee to any renewal. If a license of a licensed loan originator is not renewed before the dates in subsection (B), one hundred dollars in addition to the renewal fee pursuant to subsection (A) of this section must be assessed as a late fee to any renewal. If a licensee fails to renew his license within thirty days after the date the license expires, the administrator may require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any late fee that has accrued. All renewal applications must contain information required by the department. All fees collected by the department pursuant

to this chapter must be used to implement the provisions of this chapter.

(D) A person who is licensed as an exclusive mortgage broker pursuant to section 40-58-50(C), and who later meets the requirements of section 40-58-50(B)(2)(A) and (B), must renew his license as a mortgage broker as provided in section 40-58-50(A), (B)(1), and (B)(2)(A) and (B).

Section 40-58-120.

(A) A licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with this chapter. The recordkeeping system of a licensee is sufficient if he makes the required information reasonably available.

(B) On or before March thirty-first each year a licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all mortgage loans made or brokered by him. The licensee shall pay a fine of one hundred dollars each day for late or incomplete annual reports, after notification and right to cure.

(C) The report must include, but is not limited to, the volume and amounts of first and second lien mortgage loans originated by licensee and closed in the name of another party and the volume and amounts of first and second lien mortgage loans originated and closed in the name of the licensee.

(D) Information contained in annual reports is confidential and may be published only in composite form.

(E) Subsections (B), (C), and (D) take effect January 1, 2010.

Section 40-58-130.

(A) An exempt person described in Section 40-58-20(5)(C) who is engaged in the mortgage brokerage business, shall file a form with the administrator within thirty days of the effective date of this chapter. An exempt person who commences mortgage brokerage business in this state after the effective date of this chapter shall file the form with the administrator upon commencement of the business. this form, prescribed by the administrator, must contain the:

- (1) name of the respective exempt person;
- (2) basis of the exempt status of the exempt person;
- (3) principal business address of the exempt person; and
- (4) state or federal regulatory authority responsible for the exempt person's supervision, examination, or regulation, if any.

(B) In addition to other measures to which the exempt person may be subject pursuant to this chapter, failure by an exempt person to file the required form does not affect his exempt status. However, the exempt person is subject to a civil penalty set by the administrator that may not exceed the sum of two hundred fifty dollars for each year the form is not filed. A person required to file pursuant to this section may not transact business in this state as a mortgage broker unless the person has filed the prescribed form with the administrator in accordance with this section.

Section 40-58-140.

(A)(1) A person commits the offense of residential mortgage fraud when, with the intent to defraud, the person:

(a) knowingly makes a material act, misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or other party to the mortgage lending process;

(b) knowingly uses or facilitates the use of a material act, misstatement, misrepresentation, or omission, knowing that it contains the misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or other party to the mortgage lending process;

(c) receives proceeds or other funds in connection with a residential mortgage closing which the person knew resulted from a violation of subitem (a) or (b) of this item;

(d) conspires to violate any of the provisions of subitems (a), (b), or (c) of this item; or

(e) files or causes to be filed with the official registrar of deeds of a county of this state a document the person knows to contain a material misstatement, misrepresentation, or omission.

(2) the offense of residential mortgage fraud must not be predicated solely upon information lawfully disclosed pursuant to federal or state disclosure laws, regulations, and interpretations related to the mortgage lending process.

(B)(1) A person violating this section is guilty of a felony and, upon conviction, must be imprisoned for not less than one year or more than ten years or fined not more than five thousand dollars, or both.

(2) If a violation involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, the violation is punishable by imprisonment for not less than three years or more than twenty years or a fine not more than one hundred thousand dollars, or both.

(3) Each residential property transaction that is the subject of a violation of this section

is a separate offense.

(c) In the absence of fraud, bad faith or malice, a person is not subject to an action for civil liability for filing reports or furnishing other information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency.

(d) For the purposes of venue pursuant to this section, a violation of this section must be considered to have been committed in the county where the residential property is located that is the subject of the residential mortgage fraud.

**ii) 2007 Bill Tracking SC S.B. 924**

DATE OF INTRODUCTION: DECEMBER 12, 2007

LAST ACTION: JANUARY 8, 2008

STATUS: To SENATE Committee on BANKING AND INSURANCE.

**SYNOPSIS:** Requires the licensing of a mortgage lender or loan officer; provides for record keeping, trust and escrow accounts, mortgage fraud, a fingerprint check for mortgage brokers and mortgage originators, real estate appraisal.

**Highlights of the bill:**

- Amends the code of laws of South Carolina, 1976.
- Enacts "the South Carolina Mortgage Lending Act", by adding Chapter 22 to Title 37
- Requires the licensing of a mortgage lender, loan officer, limited loan officer, or someone acting as a mortgage lender.
- Provides definitions.
- Establishes qualifications for licensure and grounds for revocation, suspension, renewal, and termination.
- Describes prohibited activities.
- Provides for record-keeping, trust and escrow accounts, and annual reports.
- Provides for the felony offense of mortgage fraud and penalties.
- Provides for enforcement otherwise through the department of consumer affairs and through criminal penalties.
- Amends Chapter 58 of Title 40, relating to the registration of mortgage loan brokers, so as to change the registration requirements to licensing requirements, to redefine "mortgage broker", "exempt organization", "residential real property", inter alia, and to

add new definitions, including "branch office", "pattern of residential mortgage fraud", "tablefunding", and others.

- Requires certain professional courses, an additional year of experience, and a fingerprint check for mortgage brokers and mortgage originators.
- Requires certain records be kept and made accessible.
- Adds certain prohibitions in connection with a real estate appraisal.
- Requires and prescribes mortgage broker agreements.
- Authorizes enforcement by the department of consumer affairs, and prescribe administrative penalties including fines and injunctions and criminal penalties.
- Requires certain reports and filings.
- Provides for the felony offense of mortgage fraud and penalties.
- Amends sections 37-1-301, 37-3-501, and 37-23-20, all relating to definitions in connection with mortgage lending and brokering and high-cost and consumer home loans, so as to conform definitions, and to add a definition for "adjustable rate mortgage".
- Amends section 37-23-45, and section 37-23-75, both relating to disclosure to the borrower, so as to require certain disclosures in connection with an adjustable rate mortgage.
- Enacted, this act may be cited as "The South Carolina Mortgage Lending Act".
- Effective January 1, 2009.

**2. Legislation since January of 2007**

There is no new pending legislation since January of 2007.

**III. MORTGAGE FEES AND CHARGES:**

**1. Pending legislation since January of 2007**

There is no new pending legislation since January of 2007.

**2. Legislation since January of 2007**

There is no new legislation since January of 2007.

#### IV. CONTINUING EDUCATION FOR MORTGAGE INDUSTRY PROFESSIONALS:

##### 1. Pending legislation since January of 2007

i) 2007 Bill Tracking SC S.B. 1090 (Same Bill discussed under title Mortgage licensing- Pending legislation since January of 2007).

DATE OF INTRODUCTION: FEBRUARY 12, 2008

LAST ACTION: APRIL 30, 2008

STATUS: To HOUSE Committee on LABOR, COMMERCE AND INDUSTRY.

SYNOPSIS: Enacts the Mortgage Lending Act; requires the licensing of a mortgage lender, loan officer, limited loan officer, or someone acting as a mortgage lender; provides definitions; establishes qualifications for licensure and grounds for revocation, suspension, renewal, and termination; describes prohibited activities; provides for record-keeping.

Highlights of the bill:

- Among other things, requires certain professional courses, an additional year of experience, and a fingerprint check for mortgage brokers and mortgage originators.
- The related sections read as follows:

Section 40-58-50.

(B)(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the department and the descriptions of the business activities, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national and state criminal history records check and a set of the applicant's fingerprints in a form acceptable to the department. The application must be accompanied by a nonrefundable fee, payable to the department, of five hundred fifty dollars, in addition to the actual cost of obtaining national and state criminal history record checks by the Federal Bureau of Investigation (FBI) and the South Carolina Law Enforcement Division (SLED). Using the information supplied by the administrator to sled, the applicant must undergo a state criminal records check, supported by fingerprints, by sled, and a national criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. The South Carolina law enforcement division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable State and Federal guidelines. Additionally, the applicant must have completed satisfactorily, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the administrator. The course must consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the administrator or possess residential mortgage lending education or experience in



residential mortgage lending transactions that the administrator considers equivalent to the course. In addition, the applicant must complete satisfactorily a written examination approved by the administrator. The administrator may waive portions of the examination based upon satisfactory evidence to the administrator that an applicant has acquired a professional certification or accreditation that indicates mastery of the subject matter.

(C) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure pursuant to this section but does not meet the requirements of Subsection (b)(2) of this Section, the individual applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following, in addition to otherwise complying with this chapter:

(1) successfully complete both a residential mortgage-lending course approved by the administrator of not less than forty hours of classroom instruction and a written examination approved by the administrator;

(D) The application for an originator license must designate the employing mortgage broker and must include descriptions of the business activities, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national and state criminal history records check and a set of the applicant's fingerprints in a form acceptable to the department. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining national and state criminal history record checks by the FBI and SLED. Using the information supplied by the administrator to SLED, the applicant must undergo a State Criminal Records check, supported by fingerprints, by SLED, and a national criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable State and Federal guidelines. Additionally, the applicant must have completed satisfactorily, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the administrator. The course must consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the administrator or possess residential mortgage lending education or experience in residential mortgage lending transactions that the administrator considers equivalent to the course. In addition, the applicant must complete satisfactorily a written examination approved by the administrator. The administrator may waive portions of the examination based upon satisfactory evidence to the administrator that an applicant has acquired a professional certification or accreditation that indicates mastery of the subject matter.

Section 40-58-67 (E) The administrator shall require education providers of the fundamentals mortgage lending course required pursuant to section 40-58-50 and the continuing education courses required pursuant to this section to file information regarding the contents and materials of proposed courses to satisfy the education requirements with the administrator for review and approval. All course approvals expire annually and must be reviewed by the department. The administrator shall set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials may not exceed five hundred dollars and the fee for continued review may not exceed two hundred fifty dollars each year for each course offered.

**2. Legislation since January of 2007**

There is no new legislation since January of 2007

**V. OTHER SIGNIFICANT STATUTORY OR REGULATORY EFFECT ON THE MORTGAGE INDUSTRY:**

**1. Pending legislation since January of 2007**

i) 2007 Bill Tracking SC H.B. 4616

DATE OF INTRODUCTION: JANUARY 30, 2008

LAST ACTION: JANUARY 30, 2008

STATUS: To HOUSE Committee on JUDICIARY.

SYNOPSIS: (Joint Resolution) Provides for a six-month moratorium on the foreclosure of certain mortgages secured by residential real estate located in South Carolina.

Highlights of the bill:

- Provides for a six-month moratorium on the foreclosure of certain mortgages secured by residential real estate located in South Carolina.
- Text of the Bill is as follows:

Section 1. The number of foreclosures of mortgages secured by residential real estate has increased significantly both in the State of South Carolina and nationally. Not only is this trend predicted to continue over the next six months, but also the most recent rapid deterioration in the mortgage market has squelched expectations for recovery of the real estate market. The turmoil in the credit market as lenders back off the easy availability of subprime credit and the refinancing of escalating adjustable rate loans leaves both existing and would-be borrowers without the resources to save or sell their homes. The General Assembly finds that it is imperative to take action to stem this continued rise in loan delinquencies and foreclosures and the resulting devastation to

the economies of this nation and our State and to the lives of our citizens.

Section 2. There is established a six-month moratorium on the foreclosure of mortgages secured by residential real estate located in this State. For the one hundred eighty-day period beginning on the first Monday after the effective date of this joint resolution, a foreclosure action must not be filed and a mortgage holder may not foreclose on a mortgage for nonpayment or delinquency in payment if payment of the indebtedness is secured by a mortgage on an owner-occupied residence as defined in Section 12-43-220(c).

Section 3. This joint resolution takes effect upon approval by the Governor.

ii) 2007 Bill Tracking SC H.B. 4849

DATE OF INTRODUCTION: MARCH 12, 2008

LAST ACTION: MARCH 12, 2008

STATUS: To HOUSE Committee on LABOR, COMMERCE AND INDUSTRY.

SYNOPSIS: Amends the Code of Laws of South Carolina, 1976, by adding Section 37-23-90 so as to provide for the termination of acceptance of mortgage insurance premium payments and the return of escrowed mortgage insurance premiums by a lender who required mortgage insurance in connection with a consumer home loan transaction under certain circumstances.

Highlights of the bill:

- Amends the Code of Laws of South Carolina, 1976, by adding Section 37-23-90 so as to provide for the termination of acceptance of mortgage insurance premium payments and the return of escrowed mortgage insurance premiums by a lender who required mortgage insurance in connection with a consumer home loan transaction under certain circumstances.
- Text of the Bill is as follows:

Section 1. Article 5, Chapter 23, Title 37 of the 1976 Code is amended by adding:

"Section 37-23-90. (A) A lender that requires private mortgage insurance in connection with a consumer home loan must terminate the requirement and discontinue acceptance of the portion of the mortgage payment representing the mortgage premium on the first day of the month immediately following the date that the borrower repaid the loan in the amount of eighty percent of the current value of the property securing the loan.

(B) If the lender established an escrow account to accommodate payment of the mortgage insurance premiums, the lender must return all unearned private mortgage insurance premiums to the borrower within forty-five days after termination of private mortgage insurance coverage. If the lender fails to return premiums within forty-five

days, then on the forty-sixth day, the lender must pay the borrower the unearned premiums plus the legal rate of interest.

(C) The remedies provided in this section are cumulative of, and in addition to, any other remedies available in state or federal law."

Section 2. This act takes effect upon approval by the Governor.

**iii) 2007 Bill Tracking SC S.B. 564**

DATE OF INTRODUCTION: MARCH 13, 2007

LAST ACTION: MARCH 13, 2008

STATUS: To SENATE Committee on BANKING AND INSURANCE.

SYNOPSIS: Provides for allocation of excess payments on a mortgage to reduce the principal amount of the underlying obligation.

Highlights of the bill:

- Amends the Code of laws of South Carolina, 1976, by adding Section 29-3-45 so as to provide for allocation of excess payments on a mortgage to reduce the principal amount of the underlying obligation.
- Text of the Bill is as follows:

Section 1. Article 1, Chapter 3, Title 29 of the 1976 Code is amended by adding:

"Section 29-3-45. Notwithstanding another provision of law, if a mortgagor makes a payment on a secured obligation in excess of the installment payment amount established by the mortgage and the underlying obligation, the excess monies must be allocated to reduce the principal amount of the obligation."

Section 2. This act takes effect upon approval by the Governor and applies to a mortgage relationship entered into after that date.

**iv) 2007 Bill Tracking SC S.B. 1429**

DATE OF INTRODUCTION: MAY 28, 2008

LAST ACTION: JUNE 4, 2008

STATUS: To HOUSE Committee on WAYS AND MEANS.

SYNOPSIS: Authorizes special purpose districts providing hospital, nursing home, or care facilities, in counties with more than a specified amount of tax collections for the most recent fiscal year, to provide a mortgage on any real or personal property to secure its bonds or loan by any federal agency or guarantee, if the agency provides a guarantee of such loan securing the bonds.

Highlights of the bill:

- Amends Section 6-21-180, Code of Laws of South Carolina, 1976, relating to acceptance of federal loans and grants under the Revenue Bond Act for utilities, so as to permit mortgages to federal agencies in certain circumstances.
- Text of the Bill is as follows:

Section 1. Under the revenue bond act for utilities in the case of a special purpose district providing hospital, nursing home, or care facilities in a county with more than fourteen million dollars in accommodations tax collections for the most recent fiscal year, the special purpose district is authorized to provide a mortgage on any real or personal property to secure its bonds or loan by any federal agency or guarantee if the federal agency provides a guarantee of any such loan securing the bonds."

Section 2. This act takes effect upon approval by the Governor.

**2. Legislation since January of 2007**

There is no new legislation since January of 2007