



Bankers Advisory

COMPLIANCE MONITOR

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Louisiana Enacts Credit Report and Mortgage Servicer Laws

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House Bill 844: Credit Reports of Protected Persons

Louisiana has enacted R.S. 9:3571.3, provisions relating to credits reports, security freezes, and the release of credit information of protected persons. Protected person refers to someone sixteen years old or younger, an interdicted person having been appointed a curator, or an incapacitated person having been appointed a guardian or conservator. A protected person security freeze is a restriction placed on either a protected person's record or credit report that prohibits a credit reporting agency from releasing the protected person's record, credit report or any information derived from such information.

Before placing a security freeze on a protected person's credit information, credit reporting agencies must first receive sufficient proof of identification. Sufficient proof of identification means documentation that identifies the protected person or any representatives, including: any government issued identification card, a social security number, a birth certificate, or a copy of a personal bill. Where a protected person is unable or incapable to request placement of a security freeze on his or her credit information, a representative may act on behalf of the protected person after providing both sufficient proof of identification and sufficient proof of authority. Sufficient proof of authority typically includes: an order issued by a court, a valid and executed power of attorney, or a written, signed and notarized statement expressly detailing the nature and extent of the authority. This section does not apply to credit report monitoring services to which the protected person, or his or her representative, has subscribed or a person providing a copy of the protected person's credit report at the behest of the protected person.

A credit reporting agency shall place a protected person security freeze within thirty days if the protected person or representative requests and they have completed all of the following: appropriately submitted the request, provided sufficient proof of authority and identification, and paid any fees to the agency. If there is no credit report on file for the protected person, then the credit reporting agency shall create a record for the protected person. The credit reporting agency must place the security freeze within thirty days of receiving the request, and subsequently may not release any record, credit report or information derived from such.

When the security freeze is no longer necessary, the protected person or his or her representative may submit a request to remove the security freeze. If the request is made by a protected person, then the following must be provided: documentation that the protected person has reached sixteen years old or is no longer incapacitated, evidence that representative's proof of authority is no longer valid, and sufficient proof of identification. If the removal request is made by the representative, then sufficient proof of identification and authority must be presented and any fees paid to the credit reporting agency. Regardless of who makes the removal request the credit reporting agency must comply within thirty days. An agency may also remove a security freeze should the agency find the protected person or his or her representative presented a material misrepresentation of fact.

Credit reporting agencies may charge up to ten dollars per request for security freeze placement or removal. However, they may not charge any fee if the protected person's representative obtains a report of alleged identity fraud against the protected person and provides a copy to the agency. Also, no fee may be charged if a request is for a protected person under sixteen and the agency has a credit report pertaining to that protected person. Any consumer damaged by an intentional or negligent violation of these provisions may seek recovery for actual damages, reasonable attorney's fees, court costs, and any other reasonable costs.

House Bill 807: Mortgage Servicers

Louisiana has amended and reenacted provisions relating to mortgage servicers, requiring that mortgage servicers be licensed and regulated pursuant to the Louisiana Secure and Fair Enforcement of Mortgage Licensing Act of 2009. These amendments bring Louisiana mortgage servicers under the same licensing and educational requirements as mortgage lenders, brokers and originators. In this chapter, mortgage servicing refers to collecting or remitting payment for another or the right to collect or remit payments for principal, interest, tax, insurance or any other payments made in connection with a mortgage loan.

R.S.6:1086: Licensing Requirement

No person may engage in any residential mortgage activity without first obtaining and maintaining annually a license and registration as a mortgage loan originator, lender, broker or servicer.

R.S.6:1088: Application for Licensure

An applicant must submit information as to each owner and member, if a partnership; each officer, director and owner of ten or more percent of applicant's outstanding shares, if a corporation; and each settlor, trustee and beneficiary, if a trust. The commissioner may not issue a license to an applicant unless the commissioner makes the following minimum findings with regards to all applicants: all required fees have been timely paid, the applicant has never had its license revoked, no felonies are on record, and the applicants meet the financial responsibility and fitness of character standards. The commissioner may also consider whether the applicant has completed pre-licensing education, passed the written exam, or posted a surety bond.

R.S.6:1088: Surety Bond

The required amount of the surety bond shall be determined by a report of the total loan volume the applicant or licensee must submit to the commissioner. The report shall include the total dollar amount of the original outstanding principal balance of all residential mortgage loans serviced or originated in Louisiana. When calculating total loan volume, applicants and licensees shall include the total outstanding principal balance as of the end of the previous calendar year for all residential mortgage loans serviced. An employee or exclusive agent of a juridical person licensed to engage in residential mortgage lending activities may satisfy the surety bond requirement if his or her employer or principal has obtained a satisfactory surety bond.

R.S.6:1088.2: Application and Renewal Fees

A nonrefundable license fee, not to exceed \$400, must accompany each application. Annual renewal fees may not exceed \$300.

R.S.6:1088.3: License Renewal

Each licensee must submit an annual license renewal application on or before December 31st of each year. Any renewal application received after December 31st but before March 1st of the following year will be charged a \$200 late fee-for lenders, brokers and servicers-or \$50 for originators, in addition to the renewal fee. The commissioner shall not renew any license unless the applicant has complied with all final or uncontested orders, including payment of all fees, penalties and refunds.

R.S.6:1089: Name or Location Changes

No licensee may conduct residential mortgage lending activities under a name other than the one stated in the licensing system. Prior to any name or location change, the licensee must notify the commissioner and pay a one hundred dollar filing fee. If a licensee closes any of its offices, it must notify the commissioner within thirty days.

R.S.6:1090: Restrictions

No person may acquire or control a license through the acquisition of 51% or more of ownership interest without first submitting an application for a change of control in ownership of the licensee, accompanied by a \$300 fee. Any person found violating this provision will be considered to be operating without proper authority.

R.S.6:1092: Suspension and Revocation of License

The commissioner has the discretion to suspend or revoke the licensee of any licensee that: fails to maintain a surety bond, commits a serious violation, submits a payment that is returned, declined or denied, is convicted of a felony, or has his or her license suspended or revoked in a another jurisdiction. Any person with a suspended or revoked license may not reapply until at least five years have passed. However, the commissioner has the discretion to shorten or extend this reapplication period. Any person found acting without complying with the licensing requirements shall be subject to a forfeiture of any compensation earned in connection with residential mortgage lending activity occurring on or after August 15, 2001.

R.S.1099: Criminal Penalties

Any person, without holding or exercising an applicable exemption, who willfully operates without a license shall be guilty of a misdemeanor and subject to a fine of at least \$500, not to exceed \$1000. A conviction may also subject the offender to up to one year in prison.

Sections 2 and 3:

These amendments become effective June 30, 2014, and required licenses shall be obtained by applicable individuals and organizations by June 30, 2015.



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