



Bankers Advisory

COMPLIANCE MONITOR

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Rhode Island Amends Banking Regulation 6

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The Department of Business Regulation adopts the following amendment to Banking Regulation 6. The amendment applies to Lenders, Loan Brokers, and Small loan lenders as defined by the Rhode Island General Laws. Additionally, this amendment adds provisions regarding net branching, insurance claim check agents, mortgage loan originators, financial responsibility and criminal background.

For purposes of this statute, only subsidiaries and affiliates of financial institutions, credit unions, and other insured-deposit-taking institutions organized under the laws of the US and exempt from the Rhode Island General Laws are considered to be lenders or loan brokers.

Lenders, Loan Brokers and Small Loan Lenders

Requirements

- All licensees who wish to complete an application as well as make any changes to an application must do so through the National Mortgage Licensing System, also known as NMLS. Changes must be made through an NMLS filing within 30 days.
- All Licensees who obtained a license after June 30, 1995 must maintain a minimum net worth. This net worth is defined as the amount by which total assets exceed total liabilities, calculated in accordance with Generally Accepted Accounting Principles. Compliance with this requirement can be shown on a financial statement prepared on a quarterly basis.
- Along with an application, each lender, loan broker, and small loan lender must file and keep bonds current throughout the period of the licensure. The specific dollar amount of bonds can be found in the foregoing regulation.

A licensee who lends, brokers or services any mortgage loan must additionally appoint a person who holds a valid Rhode Island Mortgage Loan Originator License as the qualified individual or branch manager designated to operate the licensed business. Any lender who does not lend, broker, or services any mortgage loans may appoint qualified individuals or Branch Managers who do not hold a valid Rhode Island Mortgage Loan Originator License. However, the qualified individuals or branch managers must have the proper experience. Proper experience depends on many factors including the number, complexity, and types of transactions he/she handled in relation to the type of license sought by the application.

In addition to these requirements, the qualified individual or branch manager must be physically present at the licensed location during operating hours to personally oversee the operations. Although, they are not required to be present during all operating hours, they are required to be present for the majority of hours. If distance is a limiting factor to being physically present, the qualified individual may provide a complete explanation of how the managerial oversight criterion can be satisfied. This explanation can be included in the application.

Net branching is prohibited in the state of Rhode Island. More details on Net Branching and how Net Branching is defined can be found in the foregoing regulation.

Criminal Backgrounds

A criminal background check occurs after the following documents are submitted to the Division:

- An original and Completed Authorization for a Background Check and Release form provided on NMLS;
- A copy of a valid photo ID;
- Two fingerprint cards;
- An original certification of fingerprinting by other agencies form provided on NMLS; and
- A check in the amount of \$35 made payable to "BCI" for the cost of the criminal background.

These requirements apply to officers, directors, and owners of 10% or more and qualified individual or branch managers who do not hold a valid Mortgage Loan Originator License. Additionally, the documents listed above must be submitted in the form of postal mail.

Additionally, an applicant applying for licensure will not be eligible if she/he has any felony convictions against him within 7 years preceding the date of the application. If the felony involved any act of fraud, dishonesty, breach of trust, or money laundering, within any time period, the applicant will not be eligible for licensure. For any arrests or convictions, not including a felony, the applicant should provide an explanation and supporting documentation. The Department will consider many factors in reaching a decision to deny or approve the application, including but not limited to the number of violations, prior disciplinary history, and evidence of gross negligence. If the application is denied based on the applicant's criminal background, the applicant will be notified of such denial and reason for denial. The applicant then has 30 days to make a written demand for a hearing to determine the reasonableness of the decision.

Insurance Claim Agent

A lender must provide a copy of an agreement he/she has with an agent within Rhode Island whom the lender has previously agreed to endorse insurance checks. This agreement must include the agent's contact information. Any lender who is not considered to be a loss payee on the insurance policy is exempt from this requirement.

Change in Ownership

Any change in ownership must be made through NMLS. This includes any change in ownership of 25% or more of the voting stock or equity interests of a licensee. Notification must be made within 15 days of such change. The Department has 30 days of receipt of all required information to approve or deny such change in control.

Mortgage Loan Originators

Requirements

- Applications must be made through NMLS;
- Mortgage loan originators must maintain an active sponsorship with a properly licensed lender or loan broker;
- Mortgage loan originators may not participate in any net branching arrangements;
- Applicants must submit to a criminal background check as described above;
- Applicants must demonstrate financial responsibility pursuant to Rhode Island General laws; and
- Applicants must post and maintain a bond.

Financial Responsibility

Financial responsibility is determined by the Division as required by the Rhode Island General Laws.

Determination is made by looking at current outstanding judgments, tax liens, foreclosures within the past three years, and patterns of delinquent accounts. If any of these apply, the applicant may provide, at the time of the initial application, a full description and supporting documentation of the facts and circumstances in order to rectify the situation. Documentation must show satisfaction of judgment, bankruptcy discharge, satisfaction of tax liens, or establish repayment plans. Any other documentation that shows action has been taken to rectify the particular financial burden is also accepted.

After looking at all of the documentation, the Department will make a determination as to whether the person meets the financial responsibility requirement and notify the application of such decision as well as an explanation, if such decision is a denial. If the application is denied because of lack of financial responsibility, the applicant may make a written demand upon the Department within 30 days for a hearing to determine the reasonableness of the denial.

Each lender, loan broker, and small loan lender must maintain records of all actions taken pertaining to the application process. The regulation sets forth a list of records that the applicant must maintain.

More information and details on specific provisions can be found in Banking Regulation 6- Lenders, Loan Brokers, Small Loan Lenders and Mortgage Loan Originators. The foregoing amendments become effective June 11, 2015.