

## **286.8-010 Definitions.**

As used in this subtitle, unless the context otherwise requires:

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "Department" means the Department of Financial Institutions;
- (3) "Commissioner" means the commissioner of the department;
- (4) "Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle;
- (5) "Borrower" means any person that seeks, applies for, or obtains a mortgage loan;
- (6) "Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence for the purpose of conducting business in the mortgage lending process, including the servicing of mortgage loans;
- (7) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;
- (8) "Clerical or support duties" means administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:
  - (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or
  - (b) Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;
- (9) "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;
- (10) "Control records" means all records relating to the operation of a branch that are necessary to exercise control and supervision over the branch;
- (11) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;
- (12) "Depository institution" means a depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. sec. 1813(c), and amendments thereto, and includes any credit union;
- (13) "Employ or use" means to employ, utilize, or contract with a person or the person's employees for the purpose of participating in the mortgage lending process, including the servicing of mortgage loans;

- (14) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild;
- (15) "Licensee" means a person to whom a license has been issued;
- (16) "Managing principal" means a natural person who meets the requirements of KRS 286.8-032(6) and who agrees to actively participate in and be primarily responsible for the operations of a licensed mortgage loan broker;
- (17) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, processing, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:
  - (a) Uniform residential loan applications or other loan applications;
  - (b) Appraisal reports;
  - (c) Settlement statements;
  - (d) Supporting personal documentation for loan applications, including:
    - 1. Form W-2 or other earnings or income statements;
    - 2. Verifications of rent, income, and employment;
    - 3. Bank statements;
    - 4. Tax returns; and
    - 5. Payroll stubs;
  - (e) Any required mortgage-related disclosures; and
  - (f) Any other document required as a part of, or necessary to, the mortgage lending process;
- (18) "Mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on residential real property or any loan primarily for personal, family, or household use that is secured by collateral that has a mortgage lien interest in residential real property;
- (19) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, serves as an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself out as being able to do so;
- (20) "Mortgage loan company" means any person who directly or indirectly:
  - (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or
  - (b) Services mortgage loans, or holds oneself out as being able to do so;
- (21) "Mortgage loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain:
  - (a) Performs any one (1) or more of the following acts in the mortgage lending process:

1. Solicits, places, negotiates, or offers to make a mortgage loan;
  2. Obtains personal and financial information from a borrower or prospective borrower;
  3. Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;
  4. Explains, recommends, discusses, negotiates, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower makes or completes an application;
  5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or
  6. Takes a residential mortgage loan application; or
- (b) Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;
- (22) "Mortgage loan processor" means a natural person who performs only clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator;
- (23) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators;
- (24) "Originate" means to solicit, place, negotiate, offer to make, or broker a mortgage loan;
- (25) "Pattern of residential mortgage fraud" means residential mortgage fraud that involves two (2) or more mortgage loans that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;
- (26) "Person" means a natural person, or any type or form of corporation, company, partnership, proprietorship, or association;
- (27) "Physical location" means any location where the mortgage lending process, including the servicing of mortgage loans, is conducted;
- (28) "Record" means any books of account or other books, papers, journals, ledgers, statements, instruments, documents, files, messages, writings, correspondence, or other internal data or information, made or received in the regular course of business or otherwise, regardless of the mode in which it is recorded;
- (29) "Registrant" means a person to whom a certificate of registration has been issued;
- (30) "Residential mortgage loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan;
- (31) "Residential real property" means a dwelling as defined in the Federal Truth in Lending Act, 15 U.S.C. sec. 1602(v), or any real property upon which is constructed or intended to be constructed a dwelling as so defined;
- (32) "Service" or "servicing" means:

- (a) Receiving any scheduled periodic mortgage loan payments from a borrower, including amounts for escrow accounts or other fees or obligations related to the mortgage loan, and making or crediting the payments to the mortgage loan account, owner of the loan, or a third party assigned to receive said payments;
  - (b) Maintaining accountings of principal, interest, and other accounts associated with the servicing of mortgage loans and responding to borrower inquiries regarding the status of these loans or accounts;
  - (c) Initiating, supervising, or conducting foreclosure proceedings and property dispositions in the case of default, except this shall not include licensed attorneys representing clients in such matters; or
  - (d) In the case of a home equity conversion mortgage or reverse mortgage, making payments to the borrower;
- (33) "Takes a residential mortgage loan application" means:
- (a) Recording the borrower's application information in any form for use in a credit decision; or
  - (b) Receiving the borrower's application information in any form for use in a credit decision;
- (34) "Transact business in Kentucky" or "transacting business in Kentucky" means to participate in any meaningful way in the mortgage lending process, including the servicing of mortgage loans, with respect to any residential real property located in Kentucky;
- (35) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry; and
- (36) "Wholly owned subsidiary" means a subsidiary that is entirely owned or controlled by another person.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 761, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 104, sec. 1, effective June 25, 2009. -- Amended 2008 Ky. Acts ch. 175, sec. 4, effective April 24, 2008. -- Amended 2006 Ky. Acts ch. 218, sec. 1, effective July 12, 2006. -- Amended 2003 Ky. Acts ch. 64, sec. 1, effective June 24, 2003. -- Amended 1998 Ky. Acts ch. 197, sec. 1, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 461, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 388, sec. 13, effective July 13, 1984. -- Created 1980 Ky. Acts ch. 365, sec. 2, effective July 15, 1980.

**Formerly codified as** KRS 294.010.

**Legislative Research Commission Note** (6/25/2009). For the sake of clarity, the Reviser of Statutes has made a correction to the language of subsection (34) of this statute to enclose in quotation marks both "transact business in Kentucky" and "transacting business in Kentucky" because those terms are used separately in this subtitle.

**Legislative Research Commission Note** (7/12/2006). This section was amended in 2006 Ky. Acts ch. 218. In that same session, 2006 Ky. Acts ch. 247, sec. 38, required that all sections of KRS Chapters 287, 288, 290, 291, 294, 366, 366A, and 368 be renumbered as sections of a single KRS chapter entitled the "Kentucky Financial Services Code." Therefore, the Statute Reviser, acting under KRS 7.136(1), has changed the number of this section and codified it as a section of KRS Chapter 286.