

REFERENCE TITLE: **DIFI; business name; trade name**

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1394

Introduced by
Senator Livingston

AN ACT

AMENDING TITLE 6, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 6-117; AMENDING SECTIONS 6-606, 6-714, 6-903, 6-943, 6-977, 6-991.02 AND 44-282, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, chapter 1, article 2, Arizona Revised Statutes,
3 is amended by adding section 6-117, to read:

4 6-117. Assumed business name; trade name; notification;
5 definition

6 A. UNLESS OTHERWISE REQUIRED BY THIS TITLE OR RULES ADOPTED BY THE
7 DEPARTMENT, AN ENTERPRISE OR A CONSUMER LENDER IS NOT REQUIRED TO OBTAIN A
8 SEPARATE LICENSE WHEN DOING BUSINESS UNDER AN ASSUMED NAME OR A TRADE NAME
9 IF THE ENTERPRISE OR CONSUMER LENDER NOTIFIES THE DEPARTMENT IN WRITING,
10 ON A FORM PRESCRIBED BY THE DIRECTOR, BEFORE USING THE ASSUMED NAME OR
11 TRADE NAME.

12 B. A LICENSEE MAY NOT USE AN ASSUMED NAME OR TRADE NAME THAT
13 EITHER:

14 1. IS SO SUBSTANTIALLY SIMILAR TO THE ASSUMED NAME OR TRADE NAME OF
15 ANOTHER DEPARTMENT LICENSEE THAT IT MAY CAUSE UNCERTAINTY OR CONFUSION
16 AMONG THE PUBLIC.

17 2. TENDS TO DECEIVE OR MISLEAD THE PUBLIC AS TO THE NATURE OF
18 BUSINESS THAT THE LICENSEE CONDUCTS.

19 C. AN INDIVIDUAL MAY NOT USE AN ASSUMED NAME OR A TRADE NAME IF THE
20 INDIVIDUAL IS LICENSED, CERTIFIED OR REGISTERED PURSUANT TO EITHER:

21 1. CHAPTER 9, ARTICLE 4 OF THIS TITLE.

22 2. TITLE 32, CHAPTER 36, ARTICLE 2 OR 4.

23 D. A PERSON USING AN ASSUMED NAME OR A TRADE NAME SHALL NOTIFY THE
24 DIRECTOR WITHIN FIFTEEN DAYS AFTER ANY MATERIAL CHANGE TO THE INFORMATION
25 PROVIDED IN SUBSECTION A OF THIS SECTION.

26 E. FOR THE PURPOSES OF THIS SECTION, "CONSUMER LENDER" HAS THE SAME
27 MEANING PRESCRIBED IN SECTION 6-601.

28 Sec. 2. Section 6-606, Arizona Revised Statutes, is amended to
29 read:

30 6-606. Business limited to licensed locations; restrictions

31 A. Except as provided in subsection B of this section, ~~no~~ A
32 licensee may NOT conduct the business of making consumer lender loans
33 pursuant to this chapter under any name or at any place of business in
34 this state other than the name and place stated in the licensee's consumer
35 lender license or branch office license.

36 B. Subsection A of this section does not prohibit a licensee from:

37 1. Making consumer lender loans by mail or electronic means.

38 2. On request, making accommodations to consumers at any location
39 requested by the consumer.

40 3. Conducting any administrative, loan servicing or ~~record keeping~~
41 RECORDKEEPING activity at any other location not open to the public, if
42 the deputy director is notified in advance of that activity.

43 4. Closing a consumer lender loan secured by real property at an
44 office of a financial institution, title company, licensed escrow agent,
45 licensed mortgage broker or licensed mortgage banker.

1 5. Giving a consumer an advance on a consumer revolving loan or
2 home equity revolving loan from any location.

3 6. CONDUCTING BUSINESS PURSUANT TO THIS CHAPTER UNDER AN ASSUMED
4 NAME OR A TRADE NAME THAT IS SUBMITTED TO THE DEPARTMENT PURSUANT TO
5 SECTION 6-117.

6 C. On approval by the deputy director, the licensee may conduct any
7 of the activities listed in subsection B of this section outside of this
8 state.

9 D. A licensee may change the location of its licensed office or
10 licensed branch office by giving written notice to the deputy director,
11 who shall amend the license accordingly.

12 E. All consumer lender loans that are made at the location of a
13 licensed office or branch office are subject to the requirements of
14 article 2 of this chapter, whether made by a licensee, any person
15 otherwise exempt from this chapter pursuant to section 6-602 or any other
16 person.

17 F. ~~No~~ A licensee may NOT conduct the business of making consumer
18 lender loans pursuant to this chapter from within any licensed office or
19 branch office in which any other business not licensed pursuant to this
20 title is solicited or engaged in, or in association or conjunction with
21 any other business not licensed pursuant to this title, without giving
22 prior notice to the deputy director. If it appears to the deputy director
23 that the other business is of such a nature or is being conducted in such
24 a manner as to conceal an evasion of this chapter or is contrary to the
25 public interest or otherwise being conducted in an unlawful manner, the
26 deputy director may act pursuant to section 6-137 to restrict the licensee
27 from conducting its business in conjunction with that other business. For
28 the purposes of this subsection, "public interest" means the laws of this
29 state or of the United States or rules adopted by the deputy director.

30 Sec. 3. Section 6-714, Arizona Revised Statutes, is amended to
31 read:

32 6-714. Advertising

33 The rules and regulations of the deputy director shall include
34 standards and criteria for proper advertising and may include specific
35 prohibitions as to improper advertising by a licensee. A DEBT MANAGEMENT
36 COMPANY'S ADVERTISING, COMMUNICATION AND SALES MATERIALS SHALL CONTAIN THE
37 LICENSE NAME OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO THE
38 DEPARTMENT PURSUANT TO SECTION 6-117.

39 Sec. 4. Section 6-903, Arizona Revised Statutes, is amended to
40 read:

41 6-903. Licensing of mortgage brokers required;
42 qualifications; application; bond; fees; renewal

43 A. A person shall not act as a mortgage broker if the person is not
44 licensed under this article. A person who brokers only commercial
45 mortgage loans shall obtain either a mortgage broker license or a

1 commercial mortgage broker license. A person who brokers residential
2 mortgage loans shall obtain a mortgage broker license.

3 B. The deputy director shall not grant a mortgage broker's license
4 or a commercial mortgage broker's license to a person, other than a
5 natural person, ~~who~~ THAT is not registered to do business in this state on
6 the date of granting the license.

7 C. An applicant for an original mortgage broker's license shall:

8 1. Have not less than three years' experience as a mortgage broker
9 or loan originator or equivalent lending experience in a related business
10 during the five years immediately preceding the time of application.

11 2. Have satisfactorily completed a course of study approved by the
12 deputy director during the three years immediately preceding the time of
13 application.

14 3. Have passed a mortgage broker's test, ~~—~~ pursuant to section
15 6-908.

16 D. An applicant for an original commercial mortgage broker's
17 license shall:

18 1. Have not less than three years' experience in the commercial
19 mortgage broker business or equivalent lending experience in a related
20 business during the five years immediately preceding the time of
21 application.

22 2. Have made in the past or intend to make or negotiate or offer to
23 make or negotiate commercial mortgage loans.

24 3. Provide the deputy director with the following:

25 (a) A balance sheet prepared within the immediately preceding six
26 months and certified by the licensee. The deputy director may require a
27 more recent balance sheet.

28 (b) If the applicant has begun operations, a statement of
29 operations and retained earnings and a statement of changes in financial
30 position.

31 (c) Notes to the financial statement if applicable.

32 E. Notwithstanding subsection D, paragraph 3 of this section,
33 commercial mortgage broker licensees and commercial mortgage broker
34 license applicants whose own resources are derived exclusively from
35 correspondent contracts with institutional investors shall provide the
36 deputy director with a current financial statement or that of its parent
37 company prepared according to generally accepted accounting principles,
38 including:

39 1. A balance sheet prepared within the immediately preceding six
40 months and certified by the licensee. The deputy director may require a
41 more recent balance sheet.

42 2. If the applicant has begun operations, a statement of operations
43 and retained earnings and a statement of changes in financial position.

44 3. Notes to the financial statement if applicable.

1 F. A person shall ~~make an application~~ APPLY for a license or for a
 2 renewal of a license in writing on the forms, in the manner and
 3 accompanied by the information prescribed by the deputy director. The
 4 deputy director may require additional information on the experience,
 5 background, honesty, truthfulness, integrity and competency of the
 6 applicant and any responsible individual designated by the applicant. If
 7 the applicant is a person other than a natural person, the deputy director
 8 may require information as to the honesty, truthfulness, integrity and
 9 competency of any officer, director, shareholder or other interested party
 10 of the association, corporation or group.

11 G. The nonrefundable application fee and annual renewal fee are as
 12 prescribed in section 6-126. The nonrefundable application fee shall
 13 accompany each application for an original license only. The deputy
 14 director shall deposit, pursuant to sections 35-146 and 35-147, the monies
 15 in the state general fund.

16 H. If a licensee is a person other than a natural person, the
 17 license issued to it entitles all officers, directors, members, partners,
 18 trustees and employees of the licensed corporation, partnership,
 19 association or trust to engage in the mortgage business if one officer,
 20 director, member, partner, employee or trustee of the person is designated
 21 in the license as the individual responsible for the person under this
 22 article. If a licensee is a natural person, the license entitles all
 23 employees of the licensee to engage in the mortgage business. If the
 24 natural person is not a resident of this state, an employee of the
 25 licensee shall be designated in the license as the individual responsible
 26 for the licensee under ~~the provisions of~~ this article. For the purposes
 27 of this subsection, an employee does not include an independent
 28 contractor. ~~A~~ THE responsible individual shall be a resident of this
 29 state, shall be in active management of the activities of the licensee
 30 governed by this article and shall meet the qualifications set forth in
 31 subsection C or D of this section for a licensee.

32 I. A licensee shall notify the deputy director that its responsible
 33 individual will cease to be in active management of the activities of the
 34 licensee within ten days after learning that fact. The licensee has
 35 ninety days after the notification is received by the deputy director
 36 within which to replace the responsible individual with a qualified
 37 replacement and to so notify the deputy director. If the license is not
 38 placed under active management of a qualified responsible individual and
 39 if notice is not given to the deputy director within the ninety-day
 40 period, the license of the licensee expires.

41 J. Every person licensed as a mortgage broker or a commercial
 42 mortgage broker shall deposit with the deputy director, before doing
 43 business as a mortgage broker or a commercial mortgage broker, a bond
 44 executed by the licensee as principal and a surety company authorized to
 45 do business in this state as surety. The bond shall be conditioned on the

1 faithful compliance of the licensee, including the licensee's directors,
 2 officers, members, partners, trustees and employees, with this
 3 article. The bond is payable to any person injured by the wrongful act,
 4 default, fraud or misrepresentation of the licensee or the licensee's
 5 employees and to this state for the benefit of the person injured. Only
 6 one bond is required for any person, firm, association or corporation
 7 irrespective of the number of officers, directors, members, partners or
 8 trustees who are employed by or are members of such firm, association or
 9 corporation. ~~No~~ A suit may NOT be commenced on the bond after the
 10 expiration of one year following the commission of the act on which the
 11 suit is based, except that claims for fraud or mistake are limited to the
 12 limitation period provided in section 12-543, paragraph 3. If an injured
 13 person commences an action for a judgment to collect from the bond, the
 14 injured person shall notify the deputy director of the action in writing
 15 at the time of the commencement of the action and shall provide copies of
 16 all documents relating to the action to the deputy director on request.

17 K. The bond required by this section ~~shall be~~ IS \$10,000 for
 18 licensees whose investors are limited solely to institutional
 19 investors, and \$15,000 for licensees whose investors include any
 20 noninstitutional investors.

21 L. For the purposes of subsection K of this section:

22 1. "Institutional investor" means a state or national bank, a state
 23 or federal savings and loan association, a state or federal savings bank,
 24 a state or federal credit union, a federal government agency or
 25 instrumentality, a quasi-federal government agency, a financial
 26 enterprise, a licensed real estate broker or salesman, a profit sharing or
 27 pension trust, or an insurance company.

28 2. "Investor" means any person who directly or indirectly provides
 29 to a mortgage broker funds that are, or are intended to be, used in ~~the~~
 30 making of a loan, and any person who purchases a loan, or any interest
 31 therein, IN A LOAN from a mortgage broker or in a transaction that has
 32 been directly or indirectly arranged or negotiated by a mortgage broker.

33 M. Notwithstanding section 35-155, in lieu of the bond described in
 34 this section, an applicant for a license or a licensee may deposit with
 35 the deputy director a deposit in the form of cash or alternatives to cash
 36 in the same amount as the bond required under subsection J of this
 37 section. The deputy director may accept any of the following as an
 38 alternative to cash:

39 1. Certificates of deposits or investment certificates that are
 40 payable or assigned to the state treasurer, issued by banks or savings
 41 banks doing business in this state and fully insured by the federal
 42 deposit insurance corporation or any successor institution.

43 2. Certificates of deposit, investment certificates or share
 44 accounts that are payable or assigned to the state treasurer, issued by a
 45 savings and loan association doing business in this state and fully

1 insured by the federal deposit insurance corporation or any successor
2 institution.

3 3. Certificates of deposit, investment certificates or share
4 accounts that are payable or assigned to the state treasurer, issued by a
5 credit union doing business in this state and fully insured by the
6 national credit union administration or any successor institution.

7 N. The deputy director shall deposit the cash or alternatives to
8 cash received under this section with the state treasurer. The state
9 treasurer shall hold the cash or alternatives to cash in the name of this
10 state to guarantee the faithful performance of all legal obligations of
11 the person required to post bond pursuant to this section. The person is
12 entitled to receive any accrued interest earned from the alternatives to
13 cash. The state treasurer may impose a fee to reimburse the state
14 treasurer for administrative expenses. The fee shall not exceed \$10 for
15 each cash or alternatives to cash deposit and shall be paid by the
16 applicant or licensee. The state treasurer may prescribe rules relating
17 to the terms and conditions of each type of security provided by this
18 section.

19 O. In addition to such other terms and conditions as the deputy
20 director prescribes by rule or order, the principal amount of the deposit
21 shall be released only on written authorization of the deputy director or
22 on the order of a court of competent jurisdiction. The principal amount
23 of the deposit shall not be released before the expiration of three years
24 from the first to occur of any of the following:

- 25 1. The date of substitution of a bond for a cash alternative.
- 26 2. The surrender of the license.
- 27 3. The revocation of the license.
- 28 4. The expiration of the license.

29 P. A licensee or an employee of the licensee shall not advertise
30 for or solicit mortgage business in any manner without using the LICENSE
31 name, OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO THE
32 DEPARTMENT PURSUANT TO SECTION 6-117, and THE license number. ~~as issued on~~
33 ~~the mortgage broker's principal place of business license, except that a~~
34 ~~licensee may employ or refer to the commonly used name and any trademarks~~
35 ~~or service marks of any affiliate.~~ If a license is issued in the name of
36 a natural person, ~~nothing in~~ the advertising or solicitation may NOT imply
37 the license is in the name of another person or entity. For the purposes
38 of this subsection, ~~"advertise"~~ does not include business cards, radio
39 and television advertising directed at national or regional markets and
40 promotional items except if those items contain rates or terms on which a
41 mortgage loan may be obtained.

42 Q. A licensee shall not employ any person unless the licensee:

- 43 1. Conducts a reasonable investigation of the background, honesty,
44 truthfulness, integrity and competency of the employee before hiring.

1 2. Keeps a record of the investigation for not less than two years
2 after termination.

3 R. A license is not transferable or assignable and control of a
4 licensee may not be acquired through a stock purchase or other device
5 without the prior written consent of the deputy director. Written consent
6 shall not be given if the deputy director finds that any of the grounds
7 for denial, revocation or suspension of a license as set forth in section
8 6-905 are applicable to the acquiring person. For the purposes of this
9 subsection, "control" means the power to vote more than twenty percent of
10 outstanding voting shares of a licensed corporation, partnership,
11 association or trust.

12 S. The licensee is liable for any damage caused by any of the
13 licensee's employees while acting as an employee of the licensee.

14 T. A licensee shall comply with the requirements of section 6-114
15 relating to balloon payments.

16 U. The examination and course of study requirements of this section
17 shall be waived by the deputy director for any person applying for a
18 license who, within the six months immediately ~~prior to the submission of~~
19 **BEFORE SUBMITTING** the application, has been a licensee or a responsible
20 person pursuant to this chapter.

21 V. If the applicant for renewal of a mortgage broker license is a
22 natural person, the applicant shall have satisfactorily completed twelve
23 continuing education units by a continuing education provider approved by
24 the deputy director before submitting the renewal application. If the
25 applicant is other than a natural person, the designated responsible
26 individual shall have satisfactorily completed twelve continuing education
27 units by a continuing education provider approved by the deputy director
28 before submitting the renewal application. An applicant for renewal of a
29 commercial mortgage broker license is not subject to the continuing
30 education requirements prescribed by this article.

31 W. A licensee who employs a loan originator shall comply with
32 section 6-991.03.

33 Sec. 5. Section 6-943, Arizona Revised Statutes, is amended to
34 read:

35 6-943. Licensing of mortgage bankers required;
36 qualifications; application; bond; fees; renewal

37 A. A person shall not act as a mortgage banker if the person is not
38 licensed under this article.

39 B. The deputy director shall not grant a mortgage banker's license
40 to a person, other than a natural person, who is not registered to do
41 business in this state on the date of application for a license. The
42 deputy director shall not issue a mortgage banker's license or a renewal
43 of a license to an applicant unless the applicant meets all of the
44 requirements prescribed in subsection C of this section. The deputy
45 director shall determine whether the applicant meets the requirements

1 based on the application and evidence presented at a hearing, if any, or
2 any other evidence that the deputy director may have regarding
3 qualifications of the applicant.

4 C. In order to qualify for a mortgage banker license or a renewal
5 of a license, an applicant shall:

6 1. Have not fewer than three years' experience in the business of
7 making mortgage banking loans or equivalent lending experience in a
8 related business. If the applicant is a person other than a natural
9 person, the responsible individual shall meet this requirement.

10 2. Have engaged or intend to engage in the business of making
11 mortgage loans or mortgage banking loans.

12 3. Either:

13 (a) Be authorized to do business with any of the following:

14 (i) The federal housing administration.

15 (ii) The United States department of veterans affairs.

16 (iii) The federal national mortgage association.

17 (iv) The federal home loan mortgage corporation.

18 (b) Notwithstanding paragraph 5 of this subsection, at all times
19 have and maintain a net worth of not less than \$100,000.

20 4. Provide the deputy director with a current audited financial
21 statement, or that of its parent company, **THAT IS** prepared by an
22 independent certified public accountant in accordance with generally
23 accepted accounting principles ~~including~~ **AND THAT INCLUDES:**

24 (a) The certified public accountant's opinion as to the fairness of
25 the presentation in conformity with generally accepted accounting
26 principles.

27 (b) A balance sheet prepared within the previous six months and
28 certified by the licensee. The deputy director may require a more recent
29 balance sheet.

30 (c) A statement of operations and retained earnings and a statement
31 of changes in financial position ~~provided~~ **IF** the applicant has commenced
32 operations.

33 (d) Notes to the financial statement if applicable.

34 5. At all times have and maintain a net worth of not less than
35 \$100,000.

36 D. A person shall ~~make an application~~ **APPLY** for a license or for a
37 renewal of a license in writing on the forms, in the manner and
38 accompanied by the information prescribed by the deputy director,
39 including the requirements prescribed in subsection C of this
40 section. The deputy director may require additional information on the
41 experience, background, honesty, truthfulness, integrity and competency of
42 the applicant and any responsible individual designated by the
43 applicant. If the applicant is a person other than a natural person, the
44 deputy director may require information as to the honesty, truthfulness,
45 integrity and competency of any officer, director, shareholder, member,

1 partner, trustee, employee or other interested party of the association,
2 corporation or group.

3 E. The nonrefundable application fee and annual renewal fee ~~shall~~
4 ~~be~~ ARE as prescribed in section 6-126. The nonrefundable application fee
5 shall accompany each application for an original license only.

6 F. If a licensee is a person other than a natural person, the
7 license issued to it entitles all officers, directors, members, partners,
8 trustees and employees of the licensed corporation, partnership,
9 association or trust to engage in the mortgage banking business if one
10 officer, director, member, partner, employee or trustee of the person is
11 designated in the license as the individual responsible for the person
12 under this article. If a licensee is a natural person, the license
13 entitles all employees of the licensee to engage in the mortgage banking
14 business. If the natural person is not a resident of this state, an
15 employee of the licensee shall be designated in the license as the
16 individual responsible for the licensee under this article. For the
17 purposes of this article, an employee does not include an independent
18 contractor. For the purposes of this article, ~~a~~ THE responsible
19 individual shall be a resident of this state, shall be in active
20 management of the activities of the licensee governed by this article and
21 shall have not less than three years' experience in the business of making
22 mortgage banking loans or equivalent experience in a related business.

23 G. A licensee shall notify the deputy director that its responsible
24 individual will cease to be in active management of the licensee within
25 ten days after learning that fact. Not more than ninety days after the
26 deputy director receives the notice, the licensee shall place itself under
27 the active management of a qualified responsible person and notify the
28 deputy director. If the licensee is not placed under active management of
29 a qualified responsible individual and if notice is not received by the
30 deputy director within the ninety-day period, the license of the licensee
31 expires.

32 H. Every person licensed as a mortgage banker shall deposit with
33 the deputy director, before doing business as a mortgage banker, a bond
34 executed by the licensee as principal and a surety company authorized to
35 do business in this state as surety. The bond shall be conditioned on the
36 faithful compliance of the licensee, including ~~his~~ THE LICENSEE'S
37 directors, officers, members, partners, trustees and employees, with this
38 article. Only one bond is required for a person, firm, association or
39 corporation irrespective of the number of officers, directors, members,
40 partners or trustees who are employed by or are members of the firm,
41 association or corporation. The bond is payable to any person injured by
42 the wrongful act, default, fraud or misrepresentation of the licensee and
43 to this state for the benefit of any injured person. The coverage shall
44 be maintained in the minimum amount prescribed in this subsection,
45 computed on a base consisting of the total assets of the licensee plus the

1 unpaid balance of loans it has contracted to service for others as of the
 2 end of the licensee's fiscal year.

<u>Base</u>	<u>Minimum Bond</u>
4 Not over \$1,000,000	\$25,000 for the first \$500,000 plus \$5,000 for each \$100,000 or fraction 6 thereof over \$500,000
7 \$1,000,001 to \$10,000,000	\$50,000 plus \$5,000 for each \$1,800,000 8 or fraction thereof over \$1,000,000
9 \$10,000,001 to \$100,000,000	\$75,000 plus \$5,000 for each \$18,000,000 10 or fraction thereof over \$10,000,000
11 \$100,000,001 and over	\$100,000

12 ~~No~~ A suit may NOT be commenced on the bond after the expiration of one
 13 year following the commission of the act on which the suit is based,
 14 except that claims for fraud or mistake are limited to the limitation
 15 period provided in section 12-543, paragraph 3. If any injured person
 16 commences an action for a judgment to collect on the bond, the injured
 17 person shall notify the deputy director of the action in writing at the
 18 time of the commencement of the action and shall provide copies of all
 19 documents relating to the action to the deputy director on request.

20 I. Notwithstanding subsection H of this section, the bond required
 21 ~~shall be~~ IS \$25,000 for licensees whose investors are limited solely to
 22 institutional investors.

23 J. For the purposes of subsection I of this section:

24 1. "Institutional investor" means a state or national bank, a state
 25 or federal savings and loan association, a state or federal savings bank,
 26 a state or federal credit union, a federal government agency or
 27 instrumentality, a quasi-federal government agency, a financial
 28 enterprise, a licensed real estate broker or salesman, a profit sharing or
 29 pension trust, or an insurance company.

30 2. "Investor" means any person who directly or indirectly provides
 31 to a mortgage banker funds that are, or are intended to be, used in the
 32 making of a loan, and any person who purchases a loan, or any interest
 33 therein, from a mortgage banker or in a transaction that has been directly
 34 or indirectly arranged or negotiated by a mortgage banker.

35 K. Notwithstanding section 35-155, in lieu of the bond described in
 36 this section, an applicant for a license or a licensee may deposit with
 37 the deputy director a deposit in the form of cash or alternatives to cash
 38 in the amount prescribed in subsection H or I of this section, as
 39 applicable. The deputy director may accept any of the following as an
 40 alternative to cash:

41 1. Certificates of deposit or investment certificates that are
 42 payable or assigned to the state treasurer, issued by banks or savings
 43 banks doing business in this state and fully insured by the federal
 44 deposit insurance corporation or any successor institution.

1 2. Certificates of deposit, investment certificates or share
2 accounts that are payable or assigned to the state treasurer, issued by a
3 savings and loan association doing business in this state and fully
4 insured by the federal deposit insurance corporation or any successor
5 institution.

6 3. Certificates of deposit, investment certificates or share
7 accounts that are payable or assigned to the state treasurer, issued by a
8 credit union doing business in this state and fully insured by the
9 national credit union administration or any successor institution.

10 L. The deputy director shall deposit the cash or alternatives to
11 cash received under this section with the state treasurer. The state
12 treasurer shall hold the cash or alternatives to cash in the name of this
13 state to guarantee the faithful performance of all legal obligations of
14 the person required to post bond pursuant to this section. The person is
15 entitled to receive any accrued interest earned from the alternatives to
16 cash. The state treasurer may impose a fee to reimburse the state
17 treasurer for administrative expenses. The fee shall not exceed \$10 for
18 each cash or alternatives to cash deposit and shall be paid by the
19 applicant or licensee. The state treasurer may prescribe rules relating
20 to the terms and conditions of each type of security provided by this
21 section.

22 M. In addition to such other terms and conditions as the deputy
23 director prescribes by rule or order, the principal amount of the deposit
24 shall be released only on written authorization of the deputy director or
25 on the order of a court of competent jurisdiction. The principal amount
26 of the deposit shall not be released before the expiration of three years
27 from the first to occur of any of the following:

- 28 1. The date of substitution of a bond for a cash alternative.
- 29 2. The surrender of the license.
- 30 3. The revocation of the license.
- 31 4. The expiration of the license.

32 N. A licensee or an employee of the licensee shall not advertise
33 for or solicit mortgage banking business in any manner without using the
34 LICENSE name, OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO THE
35 DEPARTMENT PURSUANT TO SECTION 6-117, and THE license number. ~~as issued on~~
36 ~~the mortgage banker's principal place of business license, except that a~~
37 ~~licensee may also employ or refer to the commonly used name and any~~
38 ~~trademarks or service marks of any affiliate.~~ If a license is issued in
39 the name of a natural person, ~~nothing in~~ the advertising or solicitation
40 may NOT imply that the license is in the name of another person or
41 entity. For the purposes of this subsection, advertise does not include
42 business cards, radio and television advertising directed at national or
43 regional markets and promotional items except if those items contain rates
44 or terms on which a mortgage loan or mortgage banking loan may be
45 obtained.

1 0. A licensee shall not employ any person unless the licensee:
2 1. Conducts a reasonable investigation of the background, honesty,
3 truthfulness, integrity and competency of the employee before hiring.

4 2. Keeps a record of the investigation for not less than two years
5 after termination.

6 P. The licensee is liable for any damage caused by any of ~~his~~ THE
7 LICENSEE'S employees while engaged in the business of making mortgage
8 loans or mortgage banking loans.

9 Q. A licensee shall comply with the requirements of section 6-114
10 relating to balloon payments.

11 R. Notwithstanding subsection C, paragraph 4 of this section,
12 licensees and applicants whose own resources are derived exclusively from
13 correspondent contracts between mortgage bankers and banks, savings banks,
14 trust companies, savings and loan associations, credit unions, profit
15 sharing or pension trusts, consumer lenders or insurance companies shall
16 provide the deputy director with a current financial statement, or that of
17 its parent company, THAT IS prepared in accordance with generally accepted
18 accounting principles ~~including~~ AND THAT INCLUDES:

19 1. A balance sheet prepared within the previous six months and
20 certified by the licensee. The deputy director may require a more recent
21 balance sheet.

22 2. A statement of operations and retained earnings and a statement
23 of changes in financial position ~~provided~~ IF the applicant has commenced
24 operations.

25 3. Notes to the financial statement if applicable.

26 S. In addition to the grounds specified in section 6-945,
27 subsection A, failure of a licensee to operate the business of making
28 mortgage loans or mortgage banking loans for a continuous period of twelve
29 months or more shall constitute grounds for revocation of such A license.
30 The deputy director, on good cause shown, may extend the time for
31 operating such A business for a single fixed period, which shall not
32 exceed twelve months.

33 T. If the applicant for renewal of a mortgage banker license is a
34 natural person, the applicant shall have satisfactorily completed twelve
35 continuing education units by a continuing education provider approved by
36 the deputy director before submitting the renewal application. If the
37 applicant is other than a natural person, the designated responsible
38 individual shall have satisfactorily completed twelve continuing education
39 units by a continuing education provider approved by the deputy director
40 before submitting the renewal application.

41 U. A licensee who employs a loan originator shall comply with
42 section 6-991.03.

1 Sec. 6. Section 6-977, Arizona Revised Statutes, is amended to
2 read:

3 6-977. Displaying and using license number

4 A. A licensee shall prominently display the commercial mortgage
5 banker license in the office of the commercial mortgage banker.

6 B. A licensee or an employee of the licensee shall not advertise
7 for or solicit commercial mortgage loans in any manner without using the
8 LICENSE name, OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO THE
9 DEPARTMENT PURSUANT TO SECTION 6-117, and THE license number. If a
10 license is issued in the name of a natural person, ~~nothing in~~ the
11 advertising or solicitation may NOT imply that the license is in the name
12 of another person or entity. For the purposes of this
13 subsection, ~~“advertise”~~ does not include business cards, radio and
14 television advertising directed at national or regional markets and
15 promotional items unless those items contain rates or terms on which a
16 commercial mortgage loan may be obtained.

17 Sec. 7. Section 6-991.02, Arizona Revised Statutes, is amended to
18 read:

19 6-991.02. Prohibited acts

20 A. A loan originator acting on the loan originator's own behalf
21 shall not accept any monies or documents in connection with an application
22 for a mortgage loan.

23 B. An individual is not entitled to receive compensation in
24 connection with arranging for or negotiating a mortgage loan if the
25 individual is not licensed pursuant to this chapter. An individual who is
26 not specifically exempted from licensure pursuant to this article shall
27 not engage in the business of a loan originator with respect to any
28 dwelling in this state without first obtaining and maintaining annually a
29 license pursuant to this article. Each licensed loan originator must
30 register with and maintain a valid unique identifier issued by the
31 nationwide mortgage licensing system and registry established by the
32 secure and fair enforcement for mortgage licensing act of 2008 (P.L.
33 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116)
34 or its successor.

35 C. A loan originator acting on the loan originator's own behalf
36 shall not advertise, display, distribute, broadcast or televise, or cause
37 or allow to be advertised, displayed, distributed, broadcast or televised,
38 in any manner, any solicitation of mortgage business.

39 D. A loan originator shall not make, negotiate or offer to make or
40 negotiate for compensation, either directly or indirectly, a loan that is
41 either:

42 1. Less than the minimum amount that the loan originator's employer
43 is allowed to make.

44 2. Not secured by a mortgage or deed of trust or other lien
45 interest in real property unless employed by a consumer lender.

1 E. A loan originator who is employed by a mortgage broker or
2 mortgage banker to act in the capacity of the mortgage broker or mortgage
3 banker shall not be employed concurrently by any other mortgage broker or
4 mortgage banker.

5 F. A loan originator shall not collect compensation for rendering
6 services as a real estate broker or real estate salesperson licensed
7 pursuant to title 32, chapter 20 unless both of the following apply:

8 1. The loan originator is licensed pursuant to title 32,
9 chapter 20.

10 2. The employing mortgage broker or mortgage banker has disclosed
11 to the person from whom the compensation is collected at the time a
12 mortgage loan application is received that the loan originator is
13 receiving compensation both for mortgage broker or mortgage banker
14 services, if applicable, and for real estate broker or real estate
15 salesperson services.

16 G. A loan originator shall not accept any assignment of the
17 borrower's wages or salary in connection with activities governed by this
18 article.

19 H. A loan originator shall not receive or disburse monies in
20 servicing or arranging a mortgage loan.

21 I. A loan originator shall not make a false promise or
22 misrepresentation or conceal an essential or material fact in the course
23 of the mortgage broker or mortgage banker business.

24 J. A loan originator shall not fail to truthfully account for the
25 monies belonging to a party to a mortgage loan transaction or fail to
26 disburse monies in accordance with the employing mortgage broker or
27 mortgage banker agreements.

28 K. A loan originator shall not engage in illegal or improper
29 business practices.

30 L. A loan originator shall not require a person seeking a loan
31 secured by real property to obtain property insurance coverage in an
32 amount that exceeds the replacement cost of the improvements as
33 established by the property insurer.

34 M. A loan originator shall not originate a mortgage loan unless
35 employed by a mortgage broker, mortgage banker or consumer lender or under
36 an exclusive contract with an exempt person who is registered pursuant to
37 section 6-912.

38 N. A loan originator shall not advertise for or solicit mortgage
39 business in any manner without all of the following:

40 1. The EMPLOYER'S name, OR OTHER ASSUMED NAME OR TRADE NAME THAT IS
41 SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION 6-117, and THE EMPLOYER'S
42 license number ~~as issued on the employing mortgage broker's, mortgage
43 banker's, consumer lender's or registered exempt person's principal place
44 of business license.~~

1 2. Approval of the employing mortgage broker, mortgage banker,
2 consumer lender or registered exempt person.

3 3. The unique identifier the loan originator maintains with the
4 nationwide mortgage licensing system and registry established by the
5 secure and fair enforcement for mortgage licensing act of 2008 (P.L.
6 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116)
7 or its successor.

8 O. On request, a loan originator shall make available to the deputy
9 director the books and records relating to the loan originator's
10 operations. The deputy director may have access to the books and records
11 and interview the officers, principals, employees, independent
12 contractors, agents and customers of the loan originator concerning their
13 business. In connection with a request pursuant to this subsection, a
14 person may not knowingly withhold, abstract, remove, mutilate, destroy or
15 secrete any books, records or other information.

16 P. A loan processor or underwriter who is an independent contractor
17 may not engage in the activities of a loan processor or underwriter unless
18 the loan processor or underwriter obtains and maintains a license pursuant
19 to section 6-991.03. Each independent contractor loan processor or
20 underwriter licensed as a loan originator must have and maintain a valid
21 unique identifier.

22 Q. An individual engaging solely in loan processor or underwriter
23 activities shall not represent to the public through advertising or other
24 means of communicating that the individual can or will perform any of the
25 activities of a loan originator.

26 Sec. 8. Section 44-282, Arizona Revised Statutes, is amended to
27 read:

28 44-282. Licensing of sales finance companies required;
29 penalty

30 A. A person shall not engage in the business of a sales finance
31 company in this state without a sales finance company license as provided
32 in this article. A motor vehicle dealer shall not sell or transfer any
33 contract to a person in this state not licensed under the terms of this
34 chapter.

35 B. The application for a license shall be in writing, under oath
36 and in the form prescribed by the administrator. The application shall
37 contain the name of the applicant, the date of incorporation if
38 incorporated, the address where the business is or is to be conducted and
39 similar information as to any branch office of the applicant, the name and
40 resident address of the owners or partners or, if a corporation or
41 association, of the directors, trustees and principal officers, and such
42 other pertinent information the administrator may require.

43 C. The license fee for a sales finance company is the fee
44 prescribed in section 6-126.

1 D. To coincide with the licensing of motor vehicle dealers pursuant
2 to title 28, chapter 10, the administrator may issue a sales finance
3 company license pursuant to this article with staggered continuation dates
4 to distribute the continuation workload as uniformly as practicable
5 throughout the twelve months of the calendar year. In order to initiate a
6 staggered license continuation system, the administrator may issue a
7 license for more or less than a twelve-month period, but not more than
8 eighteen months, and may prorate the license fee.

9 E. A licensee shall submit its renewal application and applicable
10 renewal fees to the department of insurance and financial institutions on
11 or before the license continuation date. For the purposes of renewal, the
12 license continuation date is as follows:

13 1. If the licensee is also a licensed motor vehicle dealer pursuant
14 to title 28, chapter 10, the date prescribed by the initial licensing
15 department, either the department of transportation or the department of
16 insurance and financial institutions.

17 2. If the licensee is not also a licensed motor vehicle dealer
18 pursuant to title 28, chapter 10, the date prescribed by the department of
19 insurance and financial institutions.

20 F. A penalty of \$25 per day shall be assessed against any licensee
21 for each day after the license continuation date that the licensee's
22 renewal application and fee are not received by the department of
23 insurance and financial institutions. Licenses not renewed within thirty
24 days after their license continuation date expire.

25 G. A license shall be obtained for each separate place of business
26 at or from which a licensee transacts business. Each license shall
27 specify the location of the office or branch and must be conspicuously
28 displayed there. ~~In case~~ IF such location is changed, the administrator
29 shall endorse the change of location on the license on the payment of the
30 fee prescribed in section 6-126, subsection A.

31 H. On the filing of the application and the payment of the required
32 fee, the administrator shall issue a license to the applicant to engage in
33 the business of a sales finance company under and in accordance with this
34 article. All licenses issued under this article shall remain in full
35 force and effect until surrendered, revoked, suspended or canceled by
36 failure to renew under this article. A licensee shall not transact any
37 business provided for by this article ~~under any other name~~ WITHOUT USING
38 THE LICENSE NAME OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO
39 THE DEPARTMENT PURSUANT TO SECTION 6-117.

40 I. A license is not transferable or assignable and control of a
41 licensee may not be acquired through a stock purchase or any other device
42 without the prior written consent of the administrator. Written consent
43 shall not be given if the administrator finds that any of the grounds for
44 denial, revocation or suspension of a license as set forth in section
45 44-283 are applicable to the acquiring person. For the purposes of this

1 subsection, "control" means the power to vote more than twenty percent of
2 the outstanding voting shares of a licensed corporation, partnership,
3 association or trust.

4 J. A person doing business under the laws of this state or the
5 United States as a bank, savings bank, savings and loan association or
6 credit union is exempt from the licensing requirements of this section but
7 shall comply with all other requirements of this chapter, except that
8 affiliates of banks, savings banks, savings and loan associations or
9 credit unions shall comply with this section. For the purposes of this
10 subsection, "affiliate" means an entity that directly or indirectly,
11 through one or more intermediaries, controls, is controlled by or is under
12 common control with the entity specified.