

CHAPTER 212-D

REGULATION OF RESIDENTIAL REAL ESTATE SETTLEMENT AGENCIES

§1400-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 61, §2 (NEW).]

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

[PL 2009, c. 61, §2 (NEW).]

2. Financial institution. "Financial institution" means a bank, credit union, savings and loan association, savings bank, trust company or other similar depository or nondepository financial institution, including an institution whose accounts are insured by the full faith and credit of the United States, the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or other similar or successor programs as well as an affiliate or subsidiary of such financial institution.

[PL 2009, c. 61, §2 (NEW).]

3. Settlement agency. "Settlement agency" means the person responsible for conducting the settlement or disbursement of settlement proceeds in a residential real estate transaction effecting the sale, transfer, encumbrance or lease to another person of real or personal property located in this State. "Settlement agency" includes an individual, corporation, limited liability company, partnership or other entity conducting the settlement and disbursement of settlement proceeds.

[PL 2009, c. 61, §2 (NEW).]

4. Settlement agent. "Settlement agent" means a person engaged in the business of settlements on behalf of a settlement agency.

[PL 2009, c. 61, §2 (NEW).]

5. Settlement. "Settlement" means the receipt of loan funds, loan documents or other documents or funds to carry out the contractual terms of a residential real estate transaction.

[PL 2009, c. 61, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 61, §2 (NEW).

§1400-B. Registration; requirements

1. Registration. A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of, or act in the capacity of, a settlement agency in this State without first registering with the administrator in accordance with this chapter. The registration must be in a manner and form prescribed by the administrator. The administrator may require registration through the nationwide mortgage licensing system and registry as defined in Title 9-A, section 13-102, subsection 8. The administrator is authorized to participate in the nationwide mortgage licensing system and registry.

In all cases, whether registration is through the nationwide mortgage licensing system and registry or otherwise, the administrator may establish, by rule, requirements for registration, including but not limited to:

A. Background checks for:

- (1) Criminal history through fingerprint or other databases;
- (2) Civil or administrative records;

- (3) Credit history; or
 - (4) Any other information determined necessary by the nationwide mortgage licensing system and registry; [PL 2021, c. 245, Pt. D, §7 (NEW).]
- B. The payment of fees to apply for or renew registrations, except that the fee for an initial application may not exceed \$300 and for a renewal may not exceed \$300. If registration is through the nationwide mortgage licensing system and registry, an applicant must also pay a nationwide mortgage licensing system and registry processing fee in an amount to be determined by the administrators of the nationwide mortgage licensing system and registry. Renewal applications received after the due date are subject to an additional fee of \$100; [PL 2021, c. 245, Pt. D, §7 (NEW).]
- C. The setting or resetting as necessary of renewal or reporting dates; and [PL 2021, c. 245, Pt. D, §7 (NEW).]
- D. Other requirements for application for, amendment of or revocation of a registration or any other such activities as the administrator considers necessary. [PL 2021, c. 245, Pt. D, §7 (NEW).]

All funds received by the administrator under this chapter are appropriated for the use of the administrator, and any balance of the funds does not lapse but must be carried forward to be expended for the same purposes in the following fiscal year.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2021, c. 245, Pt. D, §7 (AMD).]

2. Exemptions. This chapter does not apply to:

- A. A person licensed to practice law in this State while engaged in the performance of the person's professional duties, except an attorney or law firm actively engaging in a separate business as a settlement agency; [PL 2009, c. 61, §2 (NEW).]
 - B. Individual settlement agents, working on behalf of a settlement agency registered or exempt under this section; [PL 2009, c. 61, §2 (NEW).]
 - C. A real estate company, broker or salesperson licensed by and subject to the jurisdiction of this State while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by the real estate company, broker or salesperson; [PL 2009, c. 61, §2 (NEW).]
 - D. A receiver, trustee in bankruptcy, executor, administrator, guardian or other person acting under the supervision or order of a court of this State or of a federal court; [PL 2009, c. 61, §2 (NEW).]
 - E. A person licensed in this State as a certified public accountant while engaged in the performance of the person's professional duties who is not actively engaged in a separate business as a settlement agency; [PL 2009, c. 61, §2 (NEW).]
 - F. A financial institution; [PL 2009, c. 61, §2 (NEW).]
 - G. A regulated lender subject to the licensing requirements of Title 9-A to the extent the lender is not engaged in a separate business as a settlement agency; [PL 2009, c. 61, §2 (NEW).]
 - H. Any federal or state agency and its political subdivisions; and [PL 2009, c. 61, §2 (NEW).]
 - I. A loan broker subject to the requirements of Title 9-A, Article 10 to the extent the loan broker is not engaged in a separate business as a settlement agency. [PL 2009, c. 61, §2 (NEW).]
- [PL 2009, c. 61, §2 (NEW).]

3. Renewal. On or before April 30th of each year, a settlement agency registered under this chapter shall pay an annual renewal fee as determined pursuant to subsection 1 and shall file with the administrator a renewal form containing such information as the administrator may require.
[PL 2021, c. 245, Pt. D, §8 (AMD).]

4. Place of business; name. A settlement agency registered under this chapter shall maintain a home office as its principal location for the transaction of settlement business. The administrator may issue additional branch registrations to the same settlement agency upon compliance with all the provisions of this chapter governing the issuance of a single settlement agency registration. For purposes of this subsection, the conducting of a settlement by mail or at a remote location for the convenience of the parties by a settlement agent based out of the settlement agency's registered principal office or registered branch office is not considered the transaction of settlement business at a place of business other than the registered location of the settlement agency.
[PL 2009, c. 61, §2 (NEW).]

5. Examinations and investigations. Upon any complaint alleging a violation of law, including the Funded Settlement Act, the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. or the Maine Consumer Credit Code, the administrator may examine or investigate the books, records and accounts of a settlement agency.
[PL 2009, c. 61, §2 (NEW).]

6. Enforcement. The administrator may undertake any action authorized pursuant to Title 9-A, Article 6 to ensure compliance with this chapter. Nothing in this subsection may be construed to affect the ability of a settlement company to assert the attorney-client privilege. With respect to a settlement company that is owned or operated by an attorney licensed in this State, the administrator shall notify the Board of Overseers of the Bar of any enforcement action taken by the administrator pursuant to this chapter.
[PL 2009, c. 61, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 61, §2 (NEW). PL 2021, c. 245, Pt. D, §§7, 8 (AMD).

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