



General Assembly

January Session, 2019

**Raised Bill No. 6995**

LCO No. 3489



Referred to Committee on BANKING

Introduced by:

(BA)

**AN ACT CONCERNING SHARED APPRECIATION AGREEMENTS  
AND CERTAIN START-UP COMPANIES ENGAGED IN THE ACTIVITY  
OF MONEY TRANSMISSION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-485 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 As used in this section and sections 36a-486 to 36a-498e, inclusive,  
4 36a-498h, 36a-534a and 36a-534b, unless the context otherwise requires:

5 (1) "Advance fee" means any consideration paid or given, directly or  
6 indirectly, by a consumer to a person for a residential mortgage loan  
7 prior to the closing of such residential mortgage loan, including, but  
8 not limited to, loan fees, points, broker's fees or commissions,  
9 transaction fees or similar prepaid finance charges;

10 (2) "Advertise", "advertisement" or "advertising" means the use of  
11 any announcement, statement, assertion or representation that is  
12 placed before the public in a newspaper, magazine or other  
13 publication, or in the form of a notice, circular, pamphlet, letter or

14 poster or over any radio or television station, by means of the Internet,  
15 or by other electronic means of distributing information, by personal  
16 contact, or in any other way;

17 (3) "Branch office" means a location other than the main office at  
18 which a licensee or any person on behalf of a licensee acts as a  
19 mortgage lender, mortgage correspondent lender, mortgage broker or  
20 mortgage loan originator;

21 (4) "Control person" means an individual that directly or indirectly  
22 exercises control over another person. Any person that (A) is a  
23 director, general partner or executive officer; (B) in the case of a  
24 corporation, directly or indirectly has the right to vote ten per cent or  
25 more of a class of any voting security or has the power to sell or direct  
26 the sale of ten per cent or more of any class of voting securities; (C) in  
27 the case of a limited liability company, is a managing member; or (D)  
28 in the case of a partnership, has the right to receive upon dissolution,  
29 or has contributed, ten per cent or more of the capital, is presumed to  
30 be a control person. For purposes of this subdivision, "control" means  
31 the power, directly or indirectly, to direct the management or policies  
32 of a company, whether through ownership of securities, by contract or  
33 otherwise;

34 (5) "Depository institution" has the same meaning as provided in  
35 Section 3 of the Federal Deposit Insurance Act, 12 USC 1813, and  
36 includes any Connecticut credit union, federal credit union or out-of-  
37 state credit union;

38 (6) "Dwelling" means a "dwelling", as defined in Section 103 of the  
39 Consumer Credit Protection Act, 15 USC 1602, that is located in this  
40 state;

41 (7) "Employee" means an individual (A) whose manner and means  
42 of work performance are subject to the right of control of, or are  
43 controlled by, a person, and (B) whose compensation is reported or  
44 required to be reported on a W-2 form issued by the controlling  
45 person. For purposes of the definition of "registered mortgage loan

46 originator", "employee" has the foregoing meaning or such other  
47 meaning as the federal banking agencies may issue in connection with  
48 such agencies' implementation of such agencies' responsibilities under  
49 the S.A.F.E. Mortgage Licensing Act of 2008, 12 USC 5101 et seq.;

50 (8) "Federal banking agency" means the Board of Governors of the  
51 Federal Reserve System, the Comptroller of the Currency, the Director  
52 of the Office of Thrift Supervision, the National Credit Union  
53 Administration and the Federal Deposit Insurance Corporation;

54 (9) "First mortgage loan" means a residential mortgage loan that is  
55 secured by a first mortgage;

56 (10) "Immediate family member" means a spouse, child, sibling,  
57 parent, grandparent or grandchild and includes stepparents,  
58 stepchildren, stepsiblings and adoptive relationships;

59 (11) "Independent contractor" means an individual retained on a  
60 basis where the individual is not an employee of any person in  
61 connection with the services such individual provides and whose  
62 compensation is reported or required to be reported on an Internal  
63 Revenue Service Form 1099 issued by the retaining person;

64 (12) "Individual" means a natural person;

65 (13) "Lead" means any information identifying a potential consumer  
66 of a residential mortgage loan;

67 (14) "Lead generator" means a person who, for or with the  
68 expectation of compensation or gain: (A) Sells, assigns or otherwise  
69 transfers one or more leads for a residential mortgage loan; (B)  
70 generates or augments one or more leads for another person; or (C)  
71 directs a consumer to another person for a residential mortgage loan  
72 by performing marketing services, including, but not limited to, online  
73 marketing, direct response advertising or telemarketing;

74 (15) "Loan processor or underwriter" means an individual who  
75 performs clerical or support duties. The term "clerical or support

76 duties" includes, subsequent to the receipt of an application, (A) the  
77 receipt, collection, distribution and analysis of information common  
78 for the processing or underwriting of a residential mortgage loan, and  
79 (B) communication with a consumer to obtain the information  
80 necessary for the processing or underwriting of a loan to the extent  
81 that such communication does not include offering or negotiating loan  
82 rates or terms or counseling consumers about residential mortgage  
83 loan rates or terms;

84 (16) "Main office" means the main address designated on the  
85 system;

86 (17) "Mortgage broker" (A) means a person who (i) for  
87 compensation or gain or with the expectation of compensation or gain  
88 (I) takes a residential mortgage loan application, or (II) offers or  
89 negotiates terms of a residential mortgage loan, and (ii) is not the  
90 prospective source of the funds for the residential mortgage loan, and  
91 (B) does not include (i) an individual who is licensed as a mortgage  
92 loan originator acting as a mortgage loan originator on behalf of such  
93 mortgage loan originator's sponsoring mortgage lender, mortgage  
94 correspondent lender, mortgage broker or exempt registrant, or (ii) an  
95 individual exempt from mortgage loan originator licensure under  
96 subdivision (2) of subsection (b) of section 36a-486 when acting within  
97 the scope of such exemption;

98 (18) "Mortgage correspondent lender" means a person engaged in  
99 the business of making residential mortgage loans in such person's  
100 own name where the loans are not held by such person for more than  
101 ninety days and are funded by another person through a warehouse  
102 agreement, table funding agreement or similar agreement;

103 (19) "Mortgage lender" means a person engaged in the business of  
104 making residential mortgage loans in such person's own name  
105 utilizing such person's own funds or by funding loans through a  
106 warehouse agreement, table funding agreement or similar agreement;

107 (20) "Mortgage loan originator" means an individual who for

108 compensation or gain or with the expectation of compensation or gain,  
109 either for such individual or for the person employing or retaining  
110 such individual, (A) takes a residential mortgage loan application, or  
111 (B) offers or negotiates terms of a residential mortgage loan. "Mortgage  
112 loan originator" does not include (i) an individual engaged solely as a  
113 loan processor or underwriter; (ii) a person who only performs real  
114 estate brokerage activities and is licensed in accordance with chapter  
115 392, unless the person is compensated by a mortgage lender, mortgage  
116 correspondent lender, mortgage broker or other mortgage loan  
117 originator or by any agent of such mortgage lender, mortgage  
118 correspondent lender, mortgage broker or other mortgage loan  
119 originator; (iii) a person solely involved in extensions of credit relating  
120 to timeshare plans, as that term is defined in Paragraph 53D of 11 USC  
121 101; or (iv) any individual who solely renegotiates terms for existing  
122 mortgage loans on behalf of a mortgagee and who does not otherwise  
123 act as a mortgage loan originator, unless the United States Department  
124 of Housing and Urban Development, the Bureau of Consumer  
125 Financial Protection or a court of competent jurisdiction determines  
126 that the S.A.F.E. Mortgage Licensing Act of 2008, 12 USC Section 5101  
127 et seq., requires such individual to be licensed as a mortgage loan  
128 originator under state laws implementing said S.A.F.E. Mortgage  
129 Licensing Act;

130 (21) "Office" means a branch office or a main office;

131 (22) "Person" means a natural person, corporation, company, limited  
132 liability company, partnership or association;

133 (23) "Principal amount of the loan" means the gross amount the  
134 borrower is obligated to repay including any prepaid finance charge  
135 that is financed, and any other charge that is financed;

136 (24) "Real estate brokerage activity" means any activity that involves  
137 offering or providing real estate brokerage services to the public,  
138 including (A) acting as a real estate agent or real estate broker for a  
139 buyer, seller, lessor or lessee of real property; (B) bringing together

140 parties interested in the sale, purchase, lease, rental or exchange of real  
141 property; (C) negotiating, on behalf of any party, any portion of a  
142 contract relating to the sale, purchase, lease, rental or exchange of real  
143 property, other than in connection with providing financing with  
144 respect to any such transaction; (D) engaging in any activity for which  
145 a person engaged in the activity is required to be registered or licensed  
146 as a real estate agent or real estate broker under any applicable law;  
147 and (E) offering to engage in any activity, or act in any capacity,  
148 described in this subdivision;

149 (25) "Registered mortgage loan originator" means any individual  
150 who (A) meets the definition of mortgage loan originator and is an  
151 employee of a depository institution, a subsidiary that is owned and  
152 controlled by a depository institution and regulated by a federal  
153 banking agency, or an institution regulated by the Farm Credit  
154 Administration; and (B) is registered with and maintains a unique  
155 identifier through the system;

156 (26) "Residential mortgage loan" means any loan, including a shared  
157 appreciation agreement, primarily for personal, family or household  
158 use that is secured by a mortgage, deed of trust or other equivalent  
159 consensual security interest on a dwelling or residential real estate  
160 upon which is constructed or intended to be constructed a dwelling;

161 (27) "Residential real estate" means any real property located in this  
162 state, upon which is constructed or intended to be constructed a  
163 dwelling;

164 (28) "Secondary mortgage loan" means a residential mortgage loan  
165 that is secured, in whole or in part, by a mortgage, provided such  
166 property is subject to one or more prior mortgages;

167 (29) "Shared appreciation agreement" means a nonrecourse  
168 obligation in which an advance sum of monetary value is extended to  
169 a consumer, as a lump sum or otherwise, in exchange for an equity  
170 interest in a dwelling, residential real estate or a future obligation to  
171 repay a sum upon the triggering of an event including, but not limited

172 to, the transfer of ownership, repayment maturity date, death of the  
173 consumer or as outlined and explicitly agreed to within said  
174 agreement.

175 [(29)] (30) "Simulated check" means a document that imitates or  
176 resembles a check but is not a negotiable instrument;

177 [(30)] (31) "Sponsored" means employed or retained as an  
178 independent contractor;

179 [(31)] (32) "Table funding agreement" means an agreement wherein  
180 a person agrees to fund mortgage loans to be made in another person's  
181 name and to purchase such loans after they are made;

182 [(32)] (33) "Trigger lead" means a consumer report obtained  
183 pursuant to subparagraph (B) of subdivision (1) of subsection (c) of  
184 Section 604 of the Fair Credit Reporting Act, 15 USC 1681b, as  
185 amended from time to time, where the issuance of the report is  
186 triggered by an inquiry made with a consumer reporting agency in  
187 response to an application for credit;

188 [(33)] (34) "Unique identifier" means a number or other identifier  
189 assigned by protocols established by the system; and

190 [(34)] (35) "Warehouse agreement" means an agreement to provide  
191 credit to a person to enable the person to have funds to make  
192 residential mortgage loans and hold such loans pending sale to other  
193 persons.

194 Sec. 2. Subsection (a) of section 36a-598 of the general statutes is  
195 repealed and the following is substituted in lieu thereof (*Effective*  
196 *October 1, 2019*):

197 (a) Each application for an initial or renewal license required under  
198 sections 36a-595 to 36a-612, inclusive, shall be made and processed on  
199 the system pursuant to section 36a-24b, in the form prescribed by the  
200 commissioner. Each such form shall contain content as set forth by  
201 instruction or procedure of the commissioner and may be changed or

202 updated as necessary by the commissioner in order to carry out the  
203 purposes of sections 36a-595 to 36a-612, inclusive. The applicant shall,  
204 at a minimum, furnish to the system information concerning the  
205 identity of the applicant, any control person of the applicant, the  
206 qualified individual and any branch manager responsible for the  
207 actions of the licensee, including, but not limited to, information  
208 related to such person's personal history and experience and any  
209 administrative, civil or criminal findings by any governmental  
210 jurisdiction. As part of an application, the commissioner may, (1) in  
211 accordance with section 29-17a, conduct a state or national criminal  
212 history records check of the applicant, any control person of the  
213 applicant, the qualified individual and any branch manager, and, (2) in  
214 accordance with section 36a-24b, (A) require the submission of  
215 fingerprints of any such person to the Federal Bureau of Investigation  
216 or other state, national or international criminal databases, and (B)  
217 investigate the financial condition of any such person and require  
218 authorization from any such person for the system and the  
219 commissioner to obtain an independent credit report from a consumer  
220 reporting agency, as described in Section 603(p) of the Fair Credit  
221 Reporting Act, 15 USC 1681a, as amended from time to time. An  
222 application for an initial license shall also include:

223 (i) A copy of the applicant's audited financial statements for the  
224 most recent fiscal year. If the applicant is a wholly-owned subsidiary  
225 of another corporation, the applicant shall include the most recent  
226 audited consolidated annual financial statements of the parent  
227 corporation or the applicant's most recent audited consolidated annual  
228 financial statement, and the most recent audited unconsolidated  
229 financial statement of the applicant, including its balance sheet and  
230 receipts and disbursements for the preceding year. If the applicant is  
231 publicly traded, the applicant shall include a copy of the most recent  
232 10-K report that such applicant filed with the Securities Exchange  
233 Commission or, if the applicant is a wholly-owned subsidiary of a  
234 publicly traded company, a copy of the parent company's most recent  
235 10-K report that was filed with the Securities and Exchange



236 Commission. If the applicant or parent company of a wholly-owned  
237 subsidiary applicant is publicly traded on a foreign exchange, the  
238 applicant shall include a copy of documentation similar to the 10-K  
239 report that was filed with the applicable securities regulator. If the  
240 applicant or parent company of a wholly-owned subsidiary applicant  
241 is a start-up company, only an initial statement of condition shall be  
242 required;

243 (ii) A list of the applicant's permissible investments, the book and  
244 market values of such investments, and the dollar amount of the  
245 applicant's aggregate outstanding money transmissions (I) as of the  
246 date of the financial statement filed in accordance with clause (i) of this  
247 subparagraph; and (II) as of a date no earlier than thirty business days  
248 prior to the filing of the application;

249 (iii) (I) The surety bond required by subsection (a) of section 36a-  
250 602, if applicable;

251 (II) A list of the investments maintained in accordance with  
252 subsection (d) of section 36a-602, if applicable, and the book and  
253 market values of any such investments as of the date of the financial  
254 statement filed in accordance with clause (i) of this subparagraph; and  
255 as of a date no earlier than thirty business days prior to the filing of the  
256 application;

257 (iv) A statement describing the type of money transmission business  
258 that will be conducted by the applicant in this state and whether such  
259 money transmission will include the transmission of monetary value in  
260 the form of virtual currency;

261 (v) The name and address of any financial institution used by the  
262 applicant for its money transmission business in this state;

263 (vi) For each authorized delegate, a sample of the contract  
264 evidencing the proposed arrangement between the applicant and the  
265 authorized delegate; and

266 (vii) Any other information the commissioner may require.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	36a-485
Sec. 2	<i>October 1, 2019</i>	36a-598(a)

**Statement of Purpose:**

To (1) make shared appreciation agreements subject to the same licensing and regulatory compliance requirements as residential mortgage loans, and (2) permit a start-up company engaged in the activity of a money transmission to provide a statement of condition as part of licensure application in lieu of certain financial statements.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*