

§1396. License; requirements

1. License. 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, an exchange facilitator in this State without first obtaining a license from the administrator in accordance with this chapter.

[PL 2009, c. 61, §1 (NEW).]

2. Issuance of license; requirements; fees. An application for a license as an exchange facilitator must be in writing and filed with the administrator in the manner and form prescribed by the administrator. The administrator may require licensing 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 licensing is through the nationwide mortgage licensing system and registry or otherwise, the administrator may establish, by rule, requirements for licensing, 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, §5 (NEW).]

B. The payment of fees to apply for or renew licenses, except that the fee for an initial application may not exceed \$600 and for a renewal may not exceed \$500. If licensing 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, §5 (NEW).]

C. The setting or resetting as necessary of renewal or reporting dates; and [PL 2021, c. 245, Pt. D, §5 (NEW).]

D. Other requirements for application for, amendment of or revocation of a license or any other such activities as the administrator considers necessary. [PL 2021, c. 245, Pt. D, §5 (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, §5 (AMD).]

3. Renewal.

[PL 2021, c. 245, Pt. D, §6 (RP).]

4. Place of business; name. An exchange facilitator licensed under this chapter shall maintain a home office as its principal location for the transaction of exchange facilitator business. The administrator may issue additional branch licenses to the same exchange facilitator licensee upon compliance with all the provisions of this chapter governing the issuance of a single exchange facilitator license. An exchange facilitator may not engage in the exchange facilitator business at any place of business for which it does not hold a license or engage in business under any other name than that on the license.

[PL 2009, c. 61, §1 (NEW).]

5. Exemptions. The following persons described in this subsection are exempt from the requirements of this chapter:

A. A taxpayer or a disqualified person, as that term is defined under United States Treasury Regulation Section 1.1031(k)-1(k), seeking to qualify for the nonrecognition provisions of Section 1031 of the United States Internal Revenue Code of 1986, as amended; [PL 2009, c. 61, §1 (NEW).]

B. A financial institution; [PL 2009, c. 61, §1 (NEW).]

C. A title insurance company, underwritten title company or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as those terms are defined under United States Treasury Regulation Section 1.1031(k)-1(g)(3), and that is not facilitating exchanges; [PL 2009, c. 61, §1 (NEW).]

D. A person that advertises for and teaches seminars or classes or otherwise makes a presentation to attorneys, accountants, real estate professionals, tax professionals or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators; [PL 2009, c. 61, §1 (NEW).]

E. A qualified intermediary, as that term is defined under United States Treasury Regulation Section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside this State; [PL 2009, c. 61, §1 (NEW).]

F. An entity in which an exchange accommodation titleholder has a 100% interest and that is used by the exchange accommodation titleholder as defined in United States Internal Revenue Service Revenue Procedure 2003-37 to take title to property in this State; [PL 2009, c. 61, §1 (NEW).]

G. 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 an exchange facilitator; [PL 2009, c. 61, §1 (NEW).]

H. 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, §1 (NEW).]

I. 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, §1 (NEW).]

J. 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 an exchange facilitator; [PL 2009, c. 61, §1 (NEW).]

K. 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 an exchange facilitator; [PL 2009, c. 61, §1 (NEW).]

L. Any federal or state agency and its political subdivisions; and [PL 2009, c. 61, §1 (NEW).]

M. A loan broker subject to the licensing requirements of Title 9-A, Article 10 to the extent the loan broker is not engaged in a separate business as an exchange facilitator. [PL 2009, c. 61, §1 (NEW).]

[PL 2009, c. 61, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 61, §1 (NEW). PL 2021, c. 245, Pt. D, §§5, 6 (AMD).

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