

**STATE OF ARKANSAS  
SECURITIES DEPARTMENT**

**IN THE MATTER OF  
ARKANSAS FAIR MORTGAGE  
LENDING ACT, A.C.A.  
SECTION 23-39-505(c) (1)**

**ORDER REGARDING THE  
MINIMUM EXPERIENCE  
QUALIFICATIONS OF CERTAIN  
MORTGAGE LOAN COMPANY  
BRANCH MANAGERS**

**ORDER NO. C-04-076-04-OR01**

**ORDER**

This Order addresses whether certain individuals who were branch managers of existing branch offices of registered or exempted mortgage loan companies in Arkansas, as of December 31, 2003, should be required to meet the minimum experience qualifications under the Arkansas Fair Mortgage Lending Act.

**FINDING OF FACT**

The Arkansas Fair Mortgage Lending Act (FMLA), Act No. 554 of 2003, which was signed into law on March 20, 2003, requires all registered mortgage loan companies to designate a branch manager for each of its branch offices doing business in Arkansas. The FMLA mandates minimum experience requirements for a designated branch manager, effective January 1, 2004. Prior to January 1, 2004, no minimum experience requirements existed in Arkansas for branch managers. There are a number of registered mortgage loan companies in Arkansas who

operate branch offices within the state, and whose branch offices existed on or before December 31, 2003, before the effective date of the FMLA. A number of those branch offices have existing branch managers in place who do not possess the required minimum of three (3) year experience. Unless the requirement is waived, these individuals will no longer be permitted to retain their positions.

### **CONCLUSION OF LAW**

The Arkansas Fair Mortgage Lending Act defines a branch office as “an office of a licensee that is separate and distinct from the licensee’s principal office”. The Act defines a branch manager as “the individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker”. **Ark. Code Ann. § 23-39-502(1) and (2)**. The Act also requires that each principal office and branch office of a mortgage broker or mortgage banker licensed under the Act shall have a branch manager who meets the experience requirements under A.C.A. 23-39-505(c)(1). **Ark. Code Ann. § 23-39-508(b)**. Section 505(c)(1) requires that each applicant have as least three (3) years of experience in mortgage lending or other experience or competency requirements as the Commissioner may adopt by rule or order. **Ark. Code Ann. § 23-39-505(c)(1)**. The Arkansas Mortgage Loan Company and Loan Broker’s Act, which was repealed by the FMLA, merely

required the registrant or applicant to identify its principal office and each branch office in this state, and furnish the name, residence address, and business address of those persons having an interest in the business, including managers. The Arkansas Mortgage Loan Company and Loan Broker's Act had no minimum experience requirement. **Ark. Code Ann. 23-39-302(2) and (3).**

### **OPINION**

It is the opinion of the Commissioner that by passage of the FMLA, individuals who had recently secured a position of branch manager became ineligible to hold that position through no fault of their own. To fail to redress this situation would result in undue hardship to those individuals and to the companies for which they work. Waiving the minimum experience requirement for this limited class of individuals appropriately balances the public interest with the undue hardship that would otherwise result if the minimum requirement was enforced in this instance.

### **CONCLUSION**

WHEREFORE, it is hereby ordered that those individuals who were branch managers of registered or exempted mortgage loan companies on December 31, 2003, meeting all other requirements of the Arkansas Fair Mortgage Lending Act, but falling short of the three (3) year minimum experience requirement, shall be

deemed to have satisfied the requirement by reason of their employment prior to such date. Those individuals who became branch managers on or after January 1, 2004, are not hereby excused from the three (3) year minimum experience requirement.

A handwritten signature in black ink, appearing to read "M. Johnson". The signature is fluid and cursive, with the first letter "M" being particularly large and stylized.

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Michael B. Johnson  
Arkansas Securities Commissioner

APRIL 23, 2004

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DATE