

**THE OWNER-FINANCING EXEMPTION & OTHER MORTGAGE LAW
REGISTRATION AND LICENSE EXEMPTIONS
(Revised August 2012)**

On April 11, 2012, Governor Beshear signed into law House Bill 409 ("HB 409"). It includes amendments to a couple of statutes in Kentucky's Mortgage Licensing and Regulation Act (KRS 286.8-010 to 286.8-285), which govern the activities of a person acting in the capacity of a mortgage loan broker, a mortgage loan company, a mortgage loan processor, and/or a mortgage loan originator. Because Kentucky's real estate license laws allow a real estate licensee to serve in the dual capacity of a real estate licensee and loan originator, if the requirements in 201 KAR 11:121 Section (1)(7), are met, this article will briefly discuss HB 409's amendments to KRS 286.8-290 and KRS 286.8-020.

When the amendment to KRS 286.8-290 becomes effective on July 12, 2012, the list of mortgage loan originators that are exempt from the registration and regulatory requirements of KRS 286.8-255 will include: "Any natural person including all entities owned in whole or part by that natural person that make no more than four (4) loans each calendar year." In other words, KRS 286.8-290, as of that date, will allow a person who is not "registered" with the Department of Financial Institutions ("DFI") as a mortgage loan originator to engage in loan origination in Kentucky if, and only if, the person provides four or fewer mortgage loans per calendar year. Notably, an existing mortgage loan originator exemption in KRS 286.8-290 will remain, unchanged, in the statute. It exempts from the registration requirement: "A person who originates a mortgage loan secured by a dwelling; and 1. Who is exempted by an order of the [DFI] commissioner; and 2. Whose exemption would not be contrary to the registration requirements of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto."

The aforementioned "four-mortgage-loans-per-calendar-year" cap is also included in the DFI licensure exemption for mortgage brokers/companies in KRS 286.020, as amended. Consequently, the list of mortgage loan companies and mortgage loan brokers that will be exempt from the licensure requirements will include the following, effective July 12, 2012:

Any person other than a natural person, including any affiliate of that person, that makes in the aggregate no more than four (4) mortgage loans within a calendar year with its own funds and secured by residential real property owned by the person making the mortgage loan, provided that the mortgage loan is made without the intent to resell the mortgage loan, and provided that the person does not hold itself out to the public as being primarily in the mortgage loan business.

To obtain additional information about Kentucky's registration and license requirements for mortgage loan brokers, mortgage loan companies, mortgage loan processors, and mortgage loan originators, you should visit the website of the Kentucky Department of Financial Institutions (kfi@ky.gov) or contact that agency, toll free, at (800) 223-2579 or at (502) 573-3390.