

PART V. PAWNBROKERS

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CHAPTER 61. GENERAL PROVISIONS

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Authority

The provisions of this Chapter 61 issued under the Pawnbrokers License Act (63 P. S. §§ 281-1—281-32), unless otherwise noted.

§ 61.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pawnbrokers License Act (63 P. S. § 281-1—281-32).

Capital—Tangible net worth which shall be maintained at all times by the licensee.

Charges—The aggregate total of interest, fees for storage, insurance, investigation and other services rendered by pawnbrokers licensed under the statutes of the Commonwealth.

Department—The Department of Banking of the Commonwealth.

Initial applicant—An individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized applying for a license under the act or any person appearing as owner, partner, officer, director, trustee or other official of a partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized, on the application for license under the act. This applicant for license does not possess a license for the license term that expires immediately prior to the term being applied for regarding the proposed license location.

License—A license issued by the Secretary under the act that permits an initial applicant or renewal applicant to engage in the pawnbroker business at a particular business location to the extent provided in the license's terms.

Licensee—A pawnbroker licensed by the Department to do business under this part.

Month—The period elapsing between a certain date in 1 calendar month, to and including the same date in the next succeeding month.

Municipality—The term includes a city, town, borough or township.

Newspaper notice of renewal application—A written notice in a form prescribed by the Department. This notice shall be advertised in a newspaper of general circulation by a renewal applicant for a pawnbroker's renewal license. The advertisement shall be in a form prescribed by the Department.

Newspaper of general circulation—A newspaper issued daily, or not less than once per week, intended for general distribution and circulation, sold at fixed prices per day or week, published in the English language, which satisfies the requirements of 45 Pa.C.S. Part I (relating to preliminary provisions).

(i) The newspaper shall be:

(A) A newspaper which is one of general circulation in the county and is published in the city, borough or township in which the pawnbroker's office is to be located or already is located.

(B) If there is no newspaper as described in clause (A), a newspaper of general circulation in the county, published at the county seat.

(C) If there is no newspaper as described in clause (B), a newspaper of general circulation published in the county at the place nearest such city, borough or township.

(D) If there is no newspaper as described in clause (C), the newspaper of general circulation published at the place nearest the city, borough or township in an adjoining county.

(ii) The newspaper publications required by the act and this part shall be at the cost of the applicant for license.

Newspaper notice of hearing—The written notice in a form prescribed by the Department. The notice shall be published in a newspaper of general circulation by an initial applicant for a new pawnbroker's license.

Notice of initial application and hearing—The written notice in a form prescribed by the Department. The notice is shall be posted by an initial applicant for a new pawnbroker's license at the proposed pawnbroker's business location, as further specified in this part.

Renewal applicant—The definition of "initial applicant" shall be applied, except that this applicant for license does possess a license for the license term that expires immediately prior to the renewal term being applied for regarding the licensed location.

Resident—A person as defined in section 2 of the act (63 P. S. § 281-2) residing or operating at an address within 500 feet of an initial applicant's proposed new pawnbroker's business location.

Secretary—The Secretary of the Department or a person designated by the Secretary. This definition contemplates, among other things, that a designee of the Secretary may preside over a hearing required by the act.

Source

The provisions of this § 61.1 amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6796. Immediately preceding text appears at serial page (237535).

§ 61.2. License applications, public notice, hearings and capital requirements.

(a) Blank forms of application and bond will be supplied by the Department upon request. Payment of a new license fee is required.

(b) Licenses shall be issued on the basis of information set forth in the application for license. Changes in title, place of business, office manager, owner, partner or corporate officials occurring during a license year shall require prior written approval of the Department.

(c) Every initial applicant for a license shall post a notice of initial application and hearing for at least 30 days beginning with the day the application is accepted as filed with the Secretary, in a conspicuous place at the proposed location for which the initial applicant has applied for a license, unless another location for posting the notice of initial application and hearing is approved by the Secretary. The notice of initial application and hearing shall be in the form prescribed by the Secretary. The conspicuous place of posting the notice of initial application and hearing shall face to the outside of the proposed location for which the initial applicant is applying, so that persons observing the normal main window or facade of the proposed location may readily see and read the notice of initial application and hearing, unless otherwise permitted by the Secretary due to the circumstances of the proposed pawnbroker location. At the end of at least 30 days continual posting of the notice of initial application and hearing, an initial applicant shall deliver to the Department an affidavit in a completed form as prescribed by the Department certifying that the notice of initial application and hearing has been properly posted for the required 30-day time period. A photocopy of the completed notice of the initial application and hearing also shall be provided by initial applicant to the Department as part of the initial application.

(d) A public hearing shall be held regarding any pawnbroker's license application submitted by an initial applicant. The public hearing is a fact-gathering mechanism to assist the Department in its review of the initial applicant's pawnbroker's license application while providing an opportunity for interested resi-

dents to testify regarding matters relevant to the Secretary's consideration of whether to approve the initial applicant's license application for the proposed location.

(1) *General.*

(i) A hearing regarding an initial applicant's license application may not be held by the Department until after the Department has accepted as complete a license application from the initial applicant. An initial applicant shall provide the affidavit required in subsection (e) certifying to the posting of the notice of initial application and hearing for the requisite 30-day time period, and a proof of publication of a newspaper notice of hearing.

(ii) The separate newspaper notice of hearing shall be published at least once in a newspaper of general circulation at least 10 days prior to the hearing date. An initial applicant shall cause proof of publication of the newspaper notice of hearing to be provided to the Department in a written form issued and executed by a representative of the newspaper.

(iii) The hearing shall occur at a date, time and place as deemed appropriate in the sole reasonable discretion of the Secretary.

(2) *Hearing rules.* The Secretary will preside over the hearing. The hearing rules in 1 Pa. Code Part II (relating to general rules of administrative practice and procedures) and Chapter 3 (relating to hearings and conferences) do not apply to hearings regarding an initial applicant, as described in this section, because of the fact-gathering nature of these hearings. Formal rules of evidence do not apply to these hearings. The Secretary has the authority to swear witnesses at a hearing. Procedural issues regarding any hearing will be determined by the Secretary.

(3) *Witness testimony.* Witness testimony may be limited as to time by the Secretary. The initial applicant may testify once after all witnesses, if any, have testified. Residents attending the hearing and seeking to testify will be permitted to testify. The number of witnesses including resident witnesses may be restricted in the sole discretion of the Secretary, including circumstances in which the Secretary determines that witnesses seek to offer similar testimony or to facilitate completion of the hearing within a reasonable time period. Witnesses other than residents may be permitted to testify at the hearing, in the sole discretion of the Secretary.

(4) *Costs of the hearing.* The costs of the hearing shall be paid by the initial applicant, including all costs for stenographer services, transcript printing costs and Department expenses for providing a designee of the Secretary to preside at the public hearing. Two copies of the hearing transcript shall be provided to the Department. If there is no testimony at the hearing, the transcript requirement will be waived by the Secretary.

(e) A license expires on October 1 of each year. An application for renewal shall be filed with the Department at least 30 days before the end of the license year. Applications for renewal shall be accompanied by a new bond and a check

or money order payable to the Commonwealth of Pennsylvania. A renewal applicant shall have a newspaper notice of renewal application to be published once, in a form prescribed by the Department at least 30 days prior to license renewal. A renewal applicant shall have proof of publication provided to the Department in a written form issued and executed by a representative of the newspaper of general circulation. The Secretary will consider any written comments timely received after publication of the newspaper notice of renewal application.

(f) The minimum start-up capital requirement applicable to an initial applicant for a license is \$10,000 per licensed pawnbroker office. The ongoing capital requirement applicable to a renewal applicant is \$10,000 per licensed pawnbroker office. If multiple licensed offices are held by the same licensee, the maximum total capital requirement for the offices is \$100,000. The minimum capitalization shall be maintained as permanent capital which may not be distributed to any stockholder or owner of licensee or be purchased by a licensee without the prior written approval of the Secretary. A licensee holding a valid license on December 27, 1997, shall meet the minimum capitalization requirements listed in this subsection by December 27, 1999.

(g) An applicant for a pawnbroker's license shall demonstrate that the proposed pawnbroker's location shall contain security measures and devices, such as a vault for the storage of pledge items, for the conduct of a pawnbroker's business under the circumstances of that location. An initial applicant shall demonstrate to the Department's satisfaction that the initial applicant has the requisite experience or knowledge, or both, to conduct the business of a pawnbroker under the act and this part. The knowledge or experience may include, but not necessarily be limited to, retaining an office manager with at least 1 year of knowledge and experience in the pawnbroker business or other business experience determined to be relevant in the Department's discretion. Renewal applicants shall demonstrate to the Department's satisfaction that the renewal applicant continues to have the requisite experience or knowledge to conduct the business of a pawnbroker under the act and this part.

(h) The license certificate shall be posted in a conspicuous place in the office of the pawnbroker so that it will be in full view of the public at all times.

Source

The provisions of this § 61.2 amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6796. Immediately preceding text appears at serial pages (237535) to (237536).

§ 61.3. Change of place of business.

(a) If a licensed pawnbroker seeks to retain its current license upon the relocation of its business, the relocation shall be within the same municipality where its currently licensed office is located. Any change of place of business of a licensed pawnbroker within the same municipality requires prior approval of the

Department, which will be granted upon the Department being satisfied that the requirements of this section have been met.

(b) The new place of business shall be in the same municipality for which the license was originally issued.

(c) A licensee who wishes to change the place of business to a municipality other than that indicated on the current license shall obtain a new license by filing a new application and bond and paying the license fee.

(d) Application for approval of a change of address shall be filed in writing with the Department at least 15 days prior to the intended date of change. Leases for new quarters may not be signed until the Department has approved the change of address. The Department will act on the application within 14 days. Failure of the Department to act on the application within 14 days constitutes approval, unless the Department requests additional information, which stops the 14-day review period from proceeding until the information requested by the Department is received from the licensee.

(e) The current license certificate should be forwarded to the Department with any request for approval of a proposed change in the place of business.

Source

The provisions of this § 61.3 amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6796. Immediately preceding text appears at serial page (237536).

§ 61.4. Partnerships.

(a) A license issued to a partnership shall automatically expire when one of the partners dies or withdraws from the partnership. A new license shall be obtained immediately by the surviving partners desiring to continue the business which had been conducted under the expired license. A new license shall also be required when one or more new partners are admitted to a partnership.

(b) Any change in a partnership occurring during a license year and requiring a new license shall require the payment of a new license fee.

Source

The provisions of this § 61.4 amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6796. Immediately preceding text appears at serial page (237536).

§ 61.5. Fictitious names and other name usage.

(a) The conduct of business by a licensee under an assumed or fictitious trade name is prohibited unless the following conditions are met:

(1) The licensee has complied with 54 Pa.C.S. (relating to names), as applicable.

(2) The assumed or fictitious trade name has been filed with the Department.

(b) Any change in ownership of a business operated under an assumed or fictitious trade name, in accordance with the provisions of subsection (a), shall require a revision of registration to show the change in ownership.

(c) A person or entity which is not a licensee under the act is prohibited from using in its name or fictitious name the words "pawn" or "pawnbroker" or any similar terms. Notwithstanding regulation under the act to the contrary, a person or entity may use its name or fictitious name legally in use on December 27, 1997.

(d) A person or entity which is not a licensee under the act is prohibited from advertising in any manner as a pawnbroker, and from using the words "pawn" or "pawnbroker" in a heading to or otherwise in any advertisement. Notwithstanding any regulation under the act to the contrary, advertisements in use on December 27, 1997, may be used but may not be renewed.

Source

The provisions of this § 61.5 amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6796. Immediately preceding text appears at serial page (237536).

§ 61.6. Examinations.

(a) The Department will make periodic examinations of the business and records of licensees at any time without prior notice to licensees.

(b) The cost of examinations shall be borne by the licensee. Such costs shall consist of the salary and expenses of the examiner.

(c) In case of nonpayment, the Department is authorized to recover the cost of examination from the following:

- (1) The surety on the bond.
- (2) The institution of court action against the licensee.

Source

The provisions of this § 61.6 amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6796. Immediately preceding text appears at serial page (237537).

§ 61.7. Annual report.

(a) Licensees shall, on or before March 1 of each year, file with the Department a report of operations for the previous calendar year. Such reports shall be filed under oath and on forms furnished by the Department.

(b) Licensees shall be liable for a fine of \$10 for each calendar day the report is overdue.

(c) The Department may require additional reports from any licensee.

§ 61.8. Stolen property.

(a) Licensees receiving stolen property in pledge shall surrender such property to the established rightful owner when directed to do so in writing by a properly constituted police official having jurisdiction in the situation, or by the

Department, if such owner tenders payment of the principal amount loaned exclusive of any charges which may have accrued.

(b) Licensees receiving stolen property in pledge shall, when directed to do so by a properly constituted police official, or by the Department, place a “stop” against the pledge. Such a “stop” order shall have the following provisions:

(1) The licensee shall not surrender or sell the property until there has been a legal determination of ownership, or until the “stop” order has been rescinded.

(2) When legal ownership has been adjudicated, the rightful owner shall not be required to pay either the principal amount loaned or any charges which may have accrued.

(3) The order shall automatically lapse at the expiration of 90 days unless extended by the issuing authority, or unless legal action has been taken to determine legal ownership.

(c) Licensees may seize any property offered in pledge which there is reason to believe is stolen property. To seize the property the licensee shall:

(1) Issue a seizure receipt to the person presenting the property.

(2) Deliver the seized property, together with a copy of the seizure receipt, to the local police authorities.

§ 61.9. Adverse claims.

Whenever more than one person claims the right to redeem a pledge, licensees shall incur no liability for refusing to deliver the pledge to either claimant until the respective rights of the claimants have been determined by a court of competent jurisdiction.

§ 61.10. Care of pledge.

(a) Licensees shall be liable for partial or total loss of, or damage to, a pledge, when caused by failure of the licensee to exercise reasonable care.

(b) Licensees shall be liable for loss or damage due to fire, theft or burglary resulting from lack of reasonable care by the licensee.

(c) The burden of proof to establish reasonable care shall be upon the licensee.

(d) Licensees shall carry adequate insurance or take other reasonable precautions to protect pledges against loss, damage or destruction when the financial responsibility of the pawnbroker cannot assure adequate protection to the pledgor in case of loss.

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