NEBRASKA MORTGAGE BANKER FREQUENTLY ASKED QUESTIONS

Licensing

Q. <u>How do I obtain a mortgage banker license in Nebraska</u>?
A. Effective January 1, 2008, the Department has joined the National Mortgage Licensing System ("NMLS"). All mortgage banker license applications must be processed through the NMLS. A licensee must submit a Form MU-1, a Form MU-2 for each control person, and a Form MU-3 for each branch office through the NMLS. Sample forms are available on our website.

Q. <u>May I submit a Mortgage Banker License Application in paper</u>?
A. No. Use of the NMLS is mandatory for all licensees.

Q. <u>Do we need to submit any other information in addition to the MU Forms</u>?
A. Yes. Please refer to the Nebraska instructions for a list of all additional items required for submission to the Department.

Q. <u>I am not a mortgage banker, just a mortgage broker. Do I need a mortgage banker license</u>?
A. Yes. The definition of mortgage banker is wide-ranging and includes all activities traditionally thought of as either mortgage banking or mortgage brokering. However, if you only broker loans, you should indicate that by checking only the "Mortgage Broker" box on the MU-1 Form.

Q. <u>My company only services mortgage loans. Do we need to obtain a mortgage banker license</u>?
A. Yes. The definition of mortgage banker is wide-ranging and includes all activities traditionally thought of as mortgage servicing. However, if you are only providing servicing and do not originate or broker loans, you should indicate that by checking only the "Mortgage Servicer" box on the MU-1 Form. In addition you will need to submit a Mortgage Servicer Supplemental Information Form to the Department.

Q. <u>All our company does is provide the funds at closing. Do we still have to be licensed</u>?
A. Yes. The definitions of mortgage banker and mortgage banking business are found at Sections 45-702 (9) and (10) of the Act. The definitions are wide-ranging and include directly or indirectly acquiring loans.

Q. <u>I just do table funding. Do I need a mortgage banker license</u>?
A. Yes. The definition of mortgage banker is wide-ranging and includes table funding activities.

Q. <u>What is the Department's application fee for a new mortgage banker license</u>?
A. $400.00.

Q. <u>What is the NMLS' processing fee for a new mortgage banker license</u>?
A. $100.00.

Q. <u>Do I need to post a surety bond</u>?
A. Yes. Each licensee must maintain a $100,000.00 surety bond. Under certain circumstances the Department can require a licensee to maintain a higher surety bond.

Q. <u>Can a mortgage banker applicant have a trade name (d/b/a designation)</u>?
A. A licensee may only operate under its legal name and properly registered trade names. A licensee must apply for a trade name license for each trade name that it wishes to use. There is no fee for the first trade name. Each additional trade name has an initial fee of $400.00 and an annual renewal fee of $100.00. A licensee cannot have more than seven trade names or d/b/a designations.

Please note that a mortgage banker may use a trade name (d/b/a designation) in its dealings with Nebraska residents if it meets the following requirements:

1. The trade name is registered with the Nebraska Secretary of State's Office.

2. The trade name is added to the Form MU-1.

3. All agents of the mortgage banker are required to use the mortgage banker's corporate name or trade name. Such agents may not use a separate business designation; and all legal documents must include the mortgage banker's corporate name.

Q. <u>Does a mortgage banker license cover first and junior lien mortgages, refinances, and home equity loans</u>?
A. Yes, as long as the loan is secured by real property. The definition of real property is found at Section 45-702(15).

Q. <u>What is a registered agent? Who can be appointed as a registered agent</u>?
A. A registered agent is the person appointed to accept important or legal documents from the state or other entities on behalf of the applicant. For instance, if someone sues you, the papers will be served on the registered agent at the registered office.

Any resident of Nebraska may act as a registered agent. They do not need to be an officer of the corporation. You may designate an individual who resides in Nebraska. In addition, there are professionals whose business handles these types of matters as a normal part of their practice such as an attorney or an accountant. Finally, there are several companies with a Nebraska location whose business is to act as registered agents in multiple states.

Q. <u>Does the Department provide a form for the registered agent to provide the required written consent</u>?

A. Yes. The form is available at http://www.ndbf.org/forms/Registered_Agent.pdf.

Q. <u>Can I search the Department web page to verify if a mortgage banker is licensed or obtain a list of all licensees</u>?

A. Yes. The direct website address is http://www.ndbf.org/search/fisearch.shtml.

Q. <u>Our parent company has merged with or been bought out by another company. Do we need to reapply</u>?

A. No, as long as the surviving company is currently licensed or registered under the Act. You must submit an amended Form MU-1 through the NMLS with the "surrender" box marked. You also must mail to the Department a narrative outlining the nature of the merger. The license or registration of the merged (non-surviving) company will be canceled. If the surviving entity is not currently licensed, it will need to obtain its own mortgage banker license prior to conducting business in Nebraska.

Q. <u>Will I receive a physical license</u>?

A. No. If the Department approves your application, the Department will update the NMLS to show that you have been approved.

Branches

Q. <u>What is the definition of a branch office</u>?

A. Branch office means any location at which the business of a mortgage banker is to be conducted, including (a) any offices physically located in Nebraska; (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents; and (c) any third-party or home-based locations that agents and representatives intend to use to transact business with Nebraska residents. See Section 45-702(2).

Q. <u>Does each branch need to have a separate license</u>?

A. Each branch must be separately registered with the Department. In order to register the branch, you must submit a Form MU-3 for each branch, a Form MU-2 for each branch manager, and a $75.00 fee per branch. The form and fee shall be submitted through the NMLS. However, neither a physical license nor a license number is created for each individual branch.

Q. <u>Does a branch not located in Nebraska need to be registered</u>?

A. All branches that will conduct business with Nebraska residents need to be registered. Therefore a branch located in a state other than Nebraska which will conduct business in Nebraska must be registered prior to conducting business in Nebraska. A branch located in a state other than Nebraska that will not conduct business in Nebraska does not need to be registered. However, should such branch subsequently wish to do

business in Nebraska, the branch must be registered prior to conducting business in Nebraska.

Q. <u>I employ a loan originator who will conduct business from his home. Is this home a branch that needs to be registered</u>?

A. Yes. The definition of branch office specifically includes a home-based location which conducts business with Nebraska residents.

Q. <u>What is the Department's fee to add a new branch office</u>?

A. $75.00.

Q. What is the NMLS fee to add a new branch office?

A. $20.00.

Q. <u>Do we have to notify the Department when we open, close, or relocate a branch</u>?

A. Section 45-911(9) requires notification to the Department of the opening, closing, or relocation of a branch within thirty (30) days after such branch has been opened, closed, or relocated. A licensee will need to submit a new MU-3 Form and $75.00 fee for a new branch that will conduct business in Nebraska. This submission must be made through the NMLS. A licensee will need to amend the MU-3 Form on the NMLS for each branch that either relocates or closes.

Q. <u>Is there a fee for closing or relocating a branch</u>?

A. No.

Q. <u>I want to open a net branch in Nebraska. Is that allo</u>wed?

A. The Mortgage Bankers Registration and Licensing Act does not recognize the term "net branch." A licensee can, however, conduct mortgage banking business through branch offices. However, only individuals can operate branches; it is not permissible for a licensee to allow a separate entity (corporation, limited liability company, etc.) to operate a branch office. It is therefore not permissible for a branch manager to establish a separate entity which pays the expenses of the branch and commissions to the loan officers working at the branch office.

The licensee is responsible for supervision of the staff working at the branch and must properly exercise such supervision to ensure that the branch office operates in accordance with the law. Furthermore, the licensee must retain the ultimate power to hire and to terminate the employees of the branch office. Moreover, the staff of that branch office must be employees or independent contractors of the licensee, not of the branch office manager or an entity owned by the branch office manager. If loan originators are independent contractors, written agency contracts are required. Finally, the licensee is responsible for ensuring that the records of the branch office are maintained in accordance with Section 45-711(8).

Q. I currently have an LLC. May I operate the LLC as a branch of a licensee?

A. No. Section 45-703 provides for an exemption for individuals who are employees or independent agents of a licensee. Since a LLC (or other entity) is not an individual, the LLC would not qualify for the exemption. A LLC that wishes to operate as a branch of a licensee must obtain its own license.

Q. I operate as a branch office of a licensee, but I want to use a different name. Is this allowed?

A. All branches must operate using the same name or same d/b/a designation as the licensee. If you want to add a new d/b/a designation, you need to apply for a d/b/a license through the NMLS. There is no charge for the first d/b/a designation. Each additional d/b/a designation will have a $400.00 initial license fee.

Q. Do branch office licenses need to be renewed?

A. All branch office licenses expire at the same time as the company's license. Since current licenses expire on February 29, 2008, branch office licenses also expire on that date. On and after March 1, 2008, all branch office licenses will expire on December 31st.

Q. Will I receive a physical branch license?

A. No. The Department will update the NMLS to show that the branch application has been approved.

License changes

Q. What are the requirements for changing the name of a licensee?

A. The licensee needs to amend its MU-1 Form through the NMLS, provide the Department file-stamped copies of the documents filed with the Nebraska Secretary of State to change the name and either (1) a new surety bond, or (2) a rider from the surety company noting the name change.

Q. What are the requirements for a change of address?

A. The licensee must amend its MU-1 Form through the NMLS no later than thirty days after the change in address. A new surety bond or rider must be submitted to the Department with the new address.

Q. My company, a licensee, is going to merge with another company. What are the Department requirements?

A. The license issued by the Department is entity-specific and non-assignable. The Department requires that the non-surviving entity must submit via the NMLS a Form MU-1 with the "surrender" box marked. The surviving entity must provide a letter outlining the details of the merger. If the merger will result in new directors or officers of the surviving entity, the surviving entity must follow the requirements to submit a change of control. If the surviving entity is not licensed, it must obtain a license and should do so prior to the merger.

Q. <u>My company, a licensee, is going to change our form of organization. What are the Department requirements</u>?

A. As indicated above, the license is entity-specific and non-assignable. Therefore, if you are changing the form of organization (from sole proprietorship to corporation, corporation to LLC, etc.), the new entity must apply for a new mortgage banker license. There is a limited exception to this rule for corporations which convert into (not merge into) a limited liability company. Please contact the Department prior to such a transaction for specific instructions.

Q. How soon must a licensee notify the Department in writing of any material development, including bankruptcy, business reorganization, and license suspension or revocation proceedings by other states or jurisdictions?

A. Within 30 days. See Section 45-711(9).

Change of Control

Q. <u>What is a change of control</u>?

A. Change of control is defined as a change in the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function; (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities; (c) in the case of a limited liability company, is a managing member; or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business.

Q. <u>My company is appointing new officers. What's the procedure for notifying the Department</u>?

A. A change in officers is defined by the Act as a change in control. Therefore, you must provide an amended Form MU-1 and a Form MU-2 for each of the new officers at least sixty days prior to the anticipated change of control. A $200.00 filing fee is also due. At this time, the NMLS does not have the functionality to process change of control applications. It is anticipated that such functionality will be available later in 2008. Until that time, the licensee should amend its Form MU-1 and Form MU-2(s) through the NMLS and mail a check to the Department in the amount of $200.00 for the filing fee.

Q. <u>The stock in my company is being purchased by a new owner. What is the procedure for notifying the Department</u>?

A. A change in ownership of more than 10 percent of the company's stock (or membership interests for a limited liability company) is a change of control. Therefore, you must

provide an amended Form MU-1 and a Form MU-2 for each of the new 10 percent shareholders at least sixty days prior to the anticipated change of control. A letter describing the transaction should be submitted along with a $200.00 filing fee. At this time, the NMLS does not have the functionality to process change of control applications. It is anticipated that such functionality will be available later in 2008. Until that time, the licensee should amend its Form MU-1 and Form MU-2(s) through the NMLS and mail the letter describing the transaction and a check to the Department in the amount of $200.00 for the filing fee.

Q. <u>Once I submit the change of control notice, can I go ahead with the change of control</u>?

A. No. The Department has the authority to deny the change of control application. The Department will notify you of its decision on the application. However, if the Department does not contact you within sixty days of receiving the application, the change of control application is automatically approved.

License Renewals

Q. <u>When do mortgage banker licenses expire</u>?

A. If you have a license currently, it expires on March 1, 2008. All licenses, both new and renewal, effective on or after March 1, 2008, will expire on the last day of December each year.

Q. <u>What is the Department's fee for renewing a mortgage banker license</u>?

A. $200.00. However, those renewing on March 1, 2008, will pay a prorated fee of $166.67.

Q. <u>What is the NMLS' fee for renewing a mortgage banker license</u>?

A. $100.00.

Q. <u>What is the Department's fee to renew a branch office license</u>?

A. $75.00 per branch. Those renewing on March 1, 2008, will pay a prorated fee of $62.50 per branch.

Q. <u>What is the NMLS' fee to renew a branch office license</u>?

A. $20.00 per branch.

Q. Does the Department require licensees to file annual audited financial statements?

A. The Department does not routinely require audited financial statements. If we need the statements, we will request them.

Loan Activities

Q. I am a mortgage banker licensee and also want to purchase retail installment sales contracts. Is another license required?

A. Yes. You must obtain a license pursuant to the Nebraska Installment Sales Act. Questions regarding this Act may be directed to Sharon Christensen.

Q. As a licensee, how long do I need to keep certain documents?

A. Section 45-711(8)(q) requires that licensees retain a copy of all documents and records relating to each mortgage loan and application for two years after the loan is funded or the application is denied or withdrawn.

Q. What fees may a licensee charge?

A. Section 45-714(1)(l) limits licensees to assessing only reasonable and necessary fees including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing a loan. Reasonable and necessary are undefined terms; they should be given their usual and customary meaning. Furthermore, in order to determine whether a mortgage broker fee is reasonable, the Department analyzes total broker compensation, including any yield spread premium received by the broker. The Department also expects all such fees and charges to be clearly disclosed to the consumer, and also in compliance with any applicable federal law.

Q. What interest rate may be charged on loans?

A. Loans that are made by a mortgage banker licensee or registrant and secured by real estate are exempt from usury.

Q. Can a licensee, an officer, an employee, or an agent of the licensee receive compensation for acting as a mortgage banker if they have otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage loan?

A. Yes, as long as the licensee has provided written disclosure to the person from whom compensation is collected that the licensee is receiving compensation, both for acting as a mortgage banker and for acting as a real estate broker or agent. The real estate broker or agent should contact the Nebraska Real Estate Commission at http://www.nrec.state.ne.us/index.htm or (402) 471-2201 to determine if that agency has any additional restrictions.

Q. Can a licensee collect fees and charges if the licensee refinances an existing mortgage loan to a current borrower of the licensee?

A. The answer is dependent on the circumstances. If the licensee refinances an existing mortgage loan to one of its current borrowers within twelve months of funding the previous mortgage loan made by the licensee, it can only collect fees and charges on the new funds.

Loan Originators

Q. <u>Does Nebraska license individual loan originators</u>?
A. Nebraska does not license individual loan originators.

Q. <u>Does Nebraska require a MU-4 Form for each loan originator</u>?
A. No.

Q. <u>What are the continuing education requirements for a loan originator</u>?
A. Nebraska does not require continuing education for loan originators.

Q. <u>Am I subject to discipline if I hire an individual with a criminal record</u>?
A. Section 45-707(1)(g) provides that the Department may revoke a license if the licensee has hired an individual who has been convicted of a misdemeanor involving fraud or dishonesty or involving mortgage banking, and for any felony conviction. Therefore, a licensee cannot hire an individual with a felony criminal record in any capacity. Individuals with misdemeanor convictions are taken on a case-by-case basis depending on the nature of the crime for which the individual was convicted.

Q. <u>Can I work as a loan originator if I have a criminal record</u>?
A. Section 45-708(2) provides that a person with a felony conviction or a misdemeanor conviction involving fraud or dishonesty or involving mortgage banking commits a misdemeanor by working as a loan originator for a licensed mortgage banker. Therefore, it is not permissible for individuals with such records to work in the mortgage banking industry in Nebraska. In addition, the company that hires you may be subject to discipline.

Registration

Q. <u>Under what circumstances is registration as opposed to licensing allowed</u>?
A. Registration is allowed if mortgage banking business is to be done by any of the following three entities:

1. Any holding company of a financial institution other than a registered bank holding company,

2. Any registered bank holding company, or an exempt insurance company, if the parent maintains a place of business in Nebraska,

3. Any insurance company organized or chartered under the laws of any other state if the insurance company has a place of business in Nebraska.

Q. Is registration available through the NMLS?
A. No. Registration is only available on paper forms. Please contact the Department to obtain the proper forms.

Q. What is the fee for a mortgage banker registration?
A. $200.00.

Q. When does a registration expire?
A. Registrations are effective until the next succeeding March 1, when they may be renewed.

Q. What is the fee for renewing a mortgage banker registration?
A. $100.00.

Exemptions

Q. What exemptions are there to licensing under the Act?
A. Exemptions to licensing are contained in Sections 45-703(1). Briefly, these include:

1. a financial institution,

2. a registered bank holding company,

3. an insurance company organized under the laws of Nebraska and subject to regulation by the Nebraska Department of Insurance,

4. Nebraska licensed lawyers when practicing law and not engaged in negotiating mortgage loans,

5. Nebraska licensed real estate brokers or salespersons when conducting those activities and not negotiating mortgage loans,

6. any individual acting solely as an employee of a licensee,

7. any individual acting solely as an agent of a licensee if there is a written agency contract between the individual and the licensee which provides that, with respect to the mortgage banking business, the individual acts exclusively for the licensee as an agent.

Q. I have been told I can make a small number of loans in Nebraska without a license. Is that true?
A. There is a de minimis exemption in Nebraska available in certain cases. There are a number of questions that must be answered prior to determining whether you can qualify for this exemption. They are as follows:

1. Do you have a website that accepts loan applications from Nebraska consumers?
   If you answer yes, you do not qualify for this exemption, unless your webpage expressly states that no Nebraska loans will be made.

2. Have you sent any mailings or e-mails to Nebraska residents?
   If you answer yes, you do not qualify for this exemption.

3. Have you conducted any advertising, either print or electronic, which could reach Nebraska residents?
   If you answer yes, you do not qualify for this exemption.

4. Have you opened a branch office physically located in Nebraska which has signage which indicates that the branch office offers mortgage loans?
   If you answer yes, you do not qualify for this exemption.

5. Have you placed an advertisement in any directory, including telephone books, that are distributed to Nebraska residents?
   If you answer yes, you do not qualify for this exemption. Further, the relevant question is where the directory is distributed. If you place an advertisement in a phone book that includes listings for towns both in Nebraska and in a neighboring state, you cannot qualify for this exemption if the phone book is distributed to Nebraska residents.

6. Have you ever told a real estate professional, including realtors, appraisers, and other mortgage lenders that you can make loans in Nebraska and have either expressly or implicitly suggested that you would accept referrals?
   If you answer yes, you do not qualify for this exemption.

   Only if you answer "No" to **all** of these questions can you qualify for this exemption. If you do qualify, you can accept up to nine loan applications per calendar year without the necessity of a license.

Q. I am an independent contractor. Am I exempt under the Act?

A. The answer is dependent on the circumstances. If an independent contractor or agent participates in residential mortgage transactions in Nebraska, that individual must be licensed or registered under the Act unless they qualify for an exemption under Section 45-703. To rely upon Section 45-703 (1)(g), there must be a written agency contract between the individual and the licensed mortgage banker. Further, the contract must clearly state that, with respect to the mortgage banking business, the individual acts as an agent exclusively for the licensee. In other words, the exemption requires the individual to work for one licensee only. Please note that the exemption extends only to an individual. The individual must use the name of the mortgage banker with whom he/she has contracted and may not use a separate business name or designation.

Q. I am an employee of a mortgage banker. Am I exempt under the Act?

A. Yes, as long as you act solely as an employee of a mortgage banker licensed or registered pursuant to the Act or exempt from the Act. You cannot work as an employee of two different mortgage bankers and qualify for the exemption.

Laws

Q. What laws generally govern mortgage activity in Nebraska?

A. The Mortgage Bankers Registration and Licensing Act (Act), Section 45-701 to 45-721, and Section 45-101.02.

Q. Is the Act available on your web site?

A. Yes. It is available under the Mortgage Lenders section link called "Mortgage Banker/Broker Statutes."

Q. Does the Act apply to loan brokers?

A. The answer depends upon exactly what the loan broker is doing. If the loan broker is arranging for loans that are secured by residential real estate, then licensing pursuant to the Act is necessary. If the loan broker is arranging for loans not secured by residential real estate, they are subject to the Loan Broker Act, Sections 45-189 to 45-191.11. Questions regarding the Loan Broker Act may be directed to Tom Sindelar.

Complaints

A. How do I file a complaint against a mortgage banker licensee?

Q. The appropriate form is available on our web page under the "Consumer Information" menu. Please review the form carefully, as it provides information on what the Department can and cannot do. If the property securing the loan is not located in Nebraska, the Department does not have jurisdiction.

Nationwide Mortgage Licensing System

Q. What is the NMLS?

A. The NMLS is a multi-state online licensing system that has been developed by the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR").

Q. How many states will participate in the NMLS?

A. So far, forty states have indicated that they will join the NMLS. It is anticipated that more states will join in the future.

Q. Will I be able to check the status of my license application on line?

A. Yes. You will be able to log into the NMLS and review the status of all applications submitted.

Miscellaneous

Q. Is Nebraska a "wet settlement" state?

A. Yes. A wet settlement law is one which (i) obligates settlement agents to disburse funds in residential mortgage transactions within a specified time period, or (ii) affects the funds that must be used to disburse a residential mortgage loan, or (iii) both. Nebraska is a wet settlement state. The applicable statutes are Sections 76-2, 121 to 76-2, 123. The Department of Insurance and the Nebraska Real Estate Commission have issued rules and/or opinions regarding "good funds."

Q. I have been contacted by a company not licensed in Nebraska about co-brokering loans with them in Nebraska. Is this allowed?

A. No. A company that is not licensed in Nebraska cannot co-broker a loan with a Nebraska licensee. All loans brokered in the state must be brokered by a licensee or by an entity that qualifies for an exemption pursuant to Section 45-703.