

Mortgage Bankers Registration & Licensing Act
Chapter 45, Article 7
§§ 45-701 to 45-723

45-701

Act, how cited.

Sections 45-701 to 45-723 shall be known and may be cited as the Mortgage Bankers Registration and Licensing Act.

Last amended:

Laws 2007, LB 124, § 40

~ Revised Statutes Supplement, 2007

45-702

Terms, defined.

For purposes of the Mortgage Bankers Registration and Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a deed of trust;

(2) 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;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by a multistate licensing and application system, its affiliates, or subsidiaries;

(4) Control means 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;

(5) Department means the Department of Banking and Finance;

(6) Director means the Director of Banking and Finance;

(7) Financial institution means any person organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, or credit unions. Financial institution also means an industrial loan and investment company chartered under the laws of any other state and subject to similar supervision and regulation as a bank chartered under the laws of this state;

(8) Licensee means any person licensed under the act;

(9) Mortgage banker means any person not exempt under section 45-703 who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year;

(10) Mortgage banking business means any person who employs a mortgage banker or mortgage bankers or who directly or indirectly makes, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year for compensation or gain or in the expectation of compensation or gain;

(11) Mortgage loan means any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit;

(12) Multistate licensing and application system means a residential real estate mortgage licensing system data base of which the department is a member;

(13) Offer means every attempt to provide, offer to provide, or solicitation to provide a mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(14) Person means an association, joint venture, joint-stock company, partnership,

limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(15) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land;

(16) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(17) Registrant means a person registered pursuant to section 45-704; and

(18) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a mortgage loan.

Last amended:

Laws 2007, LB 124, § 41

Cross References:

Nebraska Bank Holding Company Act of 1995, see section 8-908.

~ Revised Statutes Supplement, 2007

45-703

Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Mortgage Bankers Registration and Licensing Act:

(a) Any financial institution or wholly owned subsidiary thereof;

(b) Any registered bank holding company;

(c) Any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(d) Any person licensed to practice law in this state who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services in the regular course of his or her practice as an attorney at law;

(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services as a real estate broker or real estate salesperson;

(f) Any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the act or exempt from the act;

(g) Any individual acting solely as an agent of a mortgage banker licensed or registered pursuant to the act or exempt from the act 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;

(h) Any holding company of a financial institution other than a registered bank holding company;

(i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska; and

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

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Last amended:

Laws 2005, LB 533, § 50

~ Revised Statutes Cumulative Supplement, 2006

45-704

Registration required; registration statement; fee; procedure; renewal.

(1) Notwithstanding any other provision of the Mortgage Bankers Registration and Licensing Act, no person exempt from licensing under subdivisions (1)(h) through (1)(j) of section 45-703 shall act as a mortgage banker or engage in the mortgage banking business until such person has registered with the department.

(2) Any person required to register pursuant to subsection (1) of this section shall submit to the department a registration statement on forms provided by the department. The forms shall contain such information as the department may prescribe as necessary or appropriate, including, but not limited to, (a) all addresses at which business is to be conducted, (b) the names and titles of each director and principal officer of the business, and (c) a description of the activities of the applicant in such detail as the department may require.

(3) The registration statement required in subsection (2) of this section shall be

accompanied by a registration fee of two hundred dollars.

(4) The department shall acknowledge the registration by issuing to the registrant a receipt or other form of acknowledgment.

(5) A registration under this section shall not be assignable.

(6) After original registration, all registrations shall remain in full force and effect until the next succeeding March 1. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of one hundred dollars.

(7) If a registrant fails to renew his, her, or its registration as required by this section and does not voluntarily surrender the registration by delivering to the director written notice of the surrender, the department may issue a notice of expiration of the registration.

Last amended:

Laws 2005, LB 533, § 51

~ Revised Statutes Cumulative Supplement, 2006

45-705

License or registration required; application; fee; registered agent.

(1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the department as provided in the Mortgage Bankers Registration and Licensing Act or is licensed under the Nebraska Installment Loan Act.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on forms prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, and (g) if the applicant is an individual, his or her social security number.

(3) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment.

(4) The application for a license as a mortgage banker shall be accompanied by an

application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (3) of section 45-715.

(5) The director may prescribe that the application for a license as a mortgage banker include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. If the applicant is a partnership, association, corporation, or other form of business organization, the director may require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (3) of section 45-715, receipt of criminal history record information by a private person or entity is prohibited.

(6) A license granted under the Mortgage Bankers Registration and Licensing Act shall not be assignable.

(7) An application is deemed filed when accepted as substantially complete by the director.

Last amended:

Laws 2007, LB 124, § 42

Cross References:

Nebraska Installment Loan Act, see section 45-1001.

~ Revised Statutes Supplement, 2007

45-706

License; issuance; denial; appeal; renewal; fee.

(1) Upon the filing of an application for a license, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Mortgage Bankers Registration and Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application; (b) delivery of the bond required under section 45-709; and (c) payment of the required fee.

(2) If the director determines that the license should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a license pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The director may deny an application for a license if an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law.

(3)(a) All initial licenses shall remain in full force and effect until the next succeeding March 1. Beginning January 1, 2008, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, licenses may be renewed annually by filing with the director an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including the information required by subsection (3) of section 45-705.

(b) Except as provided in subdivision (3)(c) of this section, for the annual renewal of a license to conduct a mortgage banking business under the Mortgage Bankers Registration and Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (3) of section 45-715.

(c) Licenses which expire on March 1, 2008, shall be renewed until December 31, 2008, upon compliance with subdivision (3)(a) of this section. For such renewals, the department shall prorate the fees provided in subdivision (3)(b) of this section using a factor of ten-twelfths.

(4) The director may require a licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Last amended:

Laws 2007, LB 124, § 43

Cross References:

Administrative Procedure Act, see section 84-920.

~ Revised Statutes Supplement, 2007

45-707

License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect.

(1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued under the Mortgage Bankers Registration and Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Mortgage Bankers Registration and Licensing Act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the Mortgage Bankers Registration and Licensing Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) of section 45-710 or has refused or failed to comply with subsection (2) of section 45-710 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-711 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual, while previously associated in any other capacity with another licensee, was the subject of a complaint under the Mortgage Bankers Registration and Licensing Act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee has violated the written restrictions or conditions under which the license was issued;

(j) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(k) The licensee has had a similar license revoked in any other jurisdiction; or

(1) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-717.01 for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 45-706 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-709, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil

or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-717.01 for acts committed before the revocation, suspension, cancellation, or expiration.

Last amended:

Laws 2006, LB 876, § 30

Cross References:

Administrative Procedure Act, see section 84-920.

Nebraska Installment Loan Act, see section 45-1001.

~ Revised Statutes Cumulative Supplement, 2006

45-708

Prohibited acts; penalty.

(1) Any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act who, without first obtaining a license or registration under the act or while such license is suspended, revoked, canceled, or expired by the director, engages in the business of or occupation of, advertises or holds himself or herself out as, claims to be, or temporarily acts as a mortgage banker in this state is guilty of a Class II misdemeanor.

(2) Any individual who has been convicted of, pleaded guilty to, or been found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law, and is employed by or maintains a contractual relationship as an agent of, any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act, is guilty of a Class I misdemeanor.

Last amended:

Laws 2007, LB 124, § 44

~ Revised Statutes Supplement, 2007

45-709

Surety bond; requirements.

(1) An applicant for a license shall file with the department a surety bond in the amount of one hundred thousand dollars, furnished by a surety company authorized to do business in the State of Nebraska. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries required in this section shall satisfy the

requirements of this section. The bond or a substitute bond shall remain in effect during all periods of licensing.

(2) At any time the director may require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under subsection (1) of this section is exhausted or is inadequate for any reason, including the financial condition of the licensee or the applicant for a license. The new or supplemental bond shall not exceed one million dollars.

(3) Until March 1, 2007, a licensee licensed prior to the operative date of this section may maintain the bond amount such licensee was originally licensed under, unless the licensee is maintaining a bond pursuant to subsection (2) of this section. Licensees maintaining a bond pursuant to subsection (2) of this section shall continue to maintain the amount of that bond until instructed otherwise by the director.

Last amended:

Laws 2006, LB 876, § 31

~ Revised Statutes Cumulative Supplement, 2006

45-710

Director; investigate complaints; request for information; costs; confidentiality.

(1) The director may examine documents and records maintained by a licensee. The director may investigate complaints about a licensee. The director may investigate reports of alleged violations of the Mortgage Bankers Registration and Licensing Act or any rule, regulation, or order of the director under the act.

(2) Upon receipt by a licensee of the director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee or any person.

(3) In conducting an examination under this section, the director may rely on reports made by the licensee which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

- (a) The United States Department of Housing and Urban Development;
- (b) The Federal Housing Administration;

- (c) The Federal National Mortgage Association;
- (d) The Government National Mortgage Association;
- (e) The Federal Home Loan Mortgage Corporation; or
- (f) The United States Department of Veterans Affairs.

(4) If the director receives a complaint or other information concerning noncompliance with the Mortgage Bankers Registration and Licensing Act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(5) The total charge for an examination or investigation shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(6) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(7) Complaint files shall be deemed public records.

Last amended:

Laws 2007, LB 124, § 45

~ Revised Statutes Supplement, 2007

45-711

Licensee; duties.

A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services mortgage loans. If a licensee ceases to service mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision

shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn; and

(9) Notify the director in writing within thirty days after the occurrence of any material development, including, but not limited to:

(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;

(b) Business reorganization;

(c) The institution of license suspension or revocation procedures by any other state or jurisdiction;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(e) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(f) A change of name, trade name, doing business as designation, or main office address;

(g) The establishment or closing of a branch office. Notice of such establishment shall be on forms prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or

(h) The closing of a branch office.

Last amended:

Laws 2007, LB 124, § 46

~ Revised Statutes Supplement, 2007

45-712

Licensee; failure to deliver abstract of title.

If a licensee in connection with a mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty business days of the borrower's request made by certified mail, return receipt requested, in connection with a proposed sale of the real property, the borrower may authorize the preparation of a new abstract of title to the real property and the person failing to deliver the original abstract shall pay the borrower the reasonable costs of the preparation of the new abstract of title. If a borrower brings an action against the person failing to deliver an abstract of title to recover the payment made, the borrower shall also be entitled to recover reasonable attorney's fees and court costs incurred in the action.

Last amended:

Laws 1989, LB 272, § 15

~ Reissue Revised Statutes of Nebraska

45-713

Transfer of servicing rights; duties.

Not less than fifteen days prior to the effective date of the transfer of servicing rights involving any mortgage loan, the licensee transferring the servicing rights shall send a written notice of transfer to each borrower which shall include:

- (1) The effective date of the transfer;
- (2) The name, address, and telephone number of the transferee and the name of a referral person or department of the transferee;
- (3) Instructions concerning payments made before the effective date of the transfer; and
- (4) Instructions concerning payments made after the effective date of the transfer.

The provisions of this section shall not apply when the licensee transferring the

servicing rights has provided the borrower with a written notice of transfer at the time of closing on the mortgage loan.

Last amended:

Laws 1996, LB 1053, § 12

~ Reissue Revised Statutes of Nebraska

45-714

Prohibited acts; violation; penalty; civil liability.

(1) A licensee, an officer, an employee, or an agent of the licensee shall not:

(a) Assess a late charge if all payments due are received before the date upon which late charges are authorized in the underlying mortgage or deed of trust or other loan documents;

(b) Delay closing of a mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(c) Misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf;

(d) Misrepresent to, or conceal from, an applicant for a mortgage loan or a borrower material facts, terms, or conditions of a mortgage loan to which the licensee is a party;

(e) Engage in any transaction, practice, or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of any mortgage loan;

(f) Receive compensation for acting as a mortgage banker if the licensee has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage loan unless 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;

(g) Advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised, in any manner, including by the Internet, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;

(h) Record a lien on real property if money is not available for the immediate disbursement to the borrower unless, before that recording, the licensee (i) informs the borrower in writing of the reason for the delay and of a definite date by which disbursement shall be made and (ii) obtains the borrower's written permission for the delay unless the delay is required by any other state or federal law;

(i) Fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money, funds, deposits, checks, drafts, mortgages, or other documents or things of value which the licensee was not entitled to retain;

(j) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;

(k) Collect fees and charges on funds other than new funds if the licensee makes a mortgage loan to refinance an existing mortgage loan to a current borrower of the licensee within twelve months after the previous mortgage loan made by the licensee;

(l) Assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds;

(m) Allow the borrower to finance, directly or indirectly, (i) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a mortgage loan or (ii) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. For purposes of this section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

(n) Falsify any documentation relating to a mortgage loan or a mortgage loan application;

(o) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt; or

(p) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a mortgage loan; or

(q) Obtain a signature on a document required to be notarized in connection with a mortgage loan or a mortgage loan application unless the qualified notary public performing the notarization is physically present at the time the signature is obtained.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a Class III misdemeanor.

(3) Any person who violates any provision of subsection (1) of this section is liable to the applicant for a mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the mortgage loan, damages resulting from such violation, interest on the damage from the date of the violation, and court costs, including reasonable attorney's fees.

Last amended:

Laws 2007, LB 124, § 47

~ Revised Statutes Supplement, 2007

45-715

Department; duties; rules and regulations.

(1) The department shall be responsible for the administration and enforcement of the Mortgage Bankers Registration and Licensing Act.

(2) The department may adopt and promulgate such rules and regulations as it may deem necessary in the administration of the act and not inconsistent with the act. The department shall make a good faith effort to provide a copy of the notice of hearing as required by section 84-907 in a timely manner to all licensees. Such notice may be sent electronically to licensees.

(3) The department may participate in a multistate licensing and application system for mortgage lenders and mortgage bankers involving one or more states, the District of Columbia, or the Commonwealth of Puerto Rico. The system shall be established to facilitate the sharing of regulatory information and the licensing and application processes, by electronic or other means. The department may allow such system to collect licensing fees on behalf of the department, allow such system to collect a processing fee for the services of the system directly from each applicant for a license, and allow such system to process and maintain records on behalf of the department, including information collected pursuant to subsection (5) of section 45-705.

Last amended:

Laws 2007, LB 124, § 48

45-716

Money collected; disposition.

(1) All fees, charges, and costs collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) All fines collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the permanent school fund.

Last amended:

Laws 2007, LB 124, § 51

45-717

Cease and desist orders; director; duties; review; violation; penalty; enforcement by Attorney General; construction of act.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Mortgage Bankers Registration and Licensing Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt within fifteen business days after the date of the order of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(4) A person who violates a cease and desist order of the director may, after notice and

hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order.

(5) Nothing in the Mortgage Bankers Registration and Licensing Act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage banking business or the right of the state to punish any person for any violation of law.

Last amended:

Laws 2006, LB 876, § 33

Cross References:

Administrative Procedure Act, see section 84-920.

~ Revised Statutes Cumulative Supplement, 2006

45-717.01

Violations; administrative fine; costs; lien.

(1) The director may, following a hearing under the Administrative Procedure Act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by sections 45-707, 45-711, and 45-714 or otherwise violated the Mortgage Bankers Registration and Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-707.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by section 45-707 or otherwise violated the Mortgage Bankers Registration and Licensing Act, the director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Last amended:

Laws 2006, LB 876, § 34

Cross References:

Administrative Procedure Act, see section 84-920.

~ Revised Statutes Cumulative Supplement, 2006

45-717.02

Investigation or proceeding; enforcement of act; director; powers; failure to comply with act; effect.

(1) For the purpose of any investigation or proceeding under the Mortgage Bankers Registration and Licensing Act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(2) The director may request the Attorney General to enforce the Mortgage Bankers Registration and Licensing Act. A civil enforcement action by the Attorney General may be filed in the district court of Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(3) Except when expressly authorized, there shall be no private cause of action for any violation of the Mortgage Bankers Registration and Licensing Act.

(4) Failure to comply with the Mortgage Bankers Registration and Licensing Act shall not affect the validity or enforceability of any mortgage loan. A person acquiring a mortgage loan or an interest in a mortgage loan is not required to ascertain the extent of compliance with the act.

Last amended:

Laws 2006, LB 876, § 35.

~ Revised Statutes Cumulative Supplement, 2006

45-718
Appeals.

In addition to any other remedy a licensee may have, any licensee or any person considering himself or herself aggrieved by any action of the department under the Mortgage Bankers Registration and Licensing Act may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Last amended:
Laws 1989, LB 272, § 21

Cross References:
Administrative Procedure Act, see section 84-920.

~ Reissue Revised Statutes of Nebraska

45-719
Act; liberal construction.

The Mortgage Bankers Registration and Licensing Act shall be construed liberally so as to effectuate its purposes.

Last amended:
Laws 1989, LB 272, § 22

~ Reissue Revised Statutes of Nebraska

45-720
Personal jurisdiction; when.

Application for a license as a mortgage banker or for registration as a mortgage banker or mortgage banking business pursuant to the Mortgage Bankers Registration and Licensing Act shall constitute sufficient contact with this state for the exercise of personal jurisdiction in any action arising under the act.

Last amended:
Laws 1989, LB 272, § 23

~ Reissue Revised Statutes of Nebraska

45-721
Loans subject to act.

Any mortgage loan made with respect to real property located in this state shall be subject to the Mortgage Bankers Registration and Licensing Act and all other applicable laws of this state, notwithstanding the place of execution, either nominal or real, of such mortgage loan.

Last amended:

Laws 1989, LB 272, § 24

~ Reissue Revised Statutes of Nebraska

45-722

Acquisition of control of mortgage banking business; procedure; disapproval; hearing.

(1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Mortgage Bankers Registration and Licensing Act without first giving thirty days' notice to the department on forms prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

(2) The director, upon receipt of such notice, shall act upon it within thirty days and, unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired mortgage banking business;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicates that the acquired mortgage banking business would not be operated honestly, soundly, or efficiently in the public interest; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Last amended:

Laws 2008, LB 851, § 22

45-723

License under multistate licensing and application system; department; powers and duties.

(1) The department may require that a mortgage banker supply all or part of the information that must be provided to obtain a license pursuant to a multistate licensing and application system data base consistent with, and in compliance with, the Mortgage Bankers Registration and Licensing Act. Nothing in this subsection shall authorize the director to require any person exempt from licensure under the act or the employees or agents of any such person to submit information to or participate in the multistate licensing and application system.

(2) Except for the department, no person shall be authorized to obtain information from a multistate licensing and application system data base or initiate any civil action based on information obtained from such data base, if such information is not currently available to such person under section 8-112 or 45-710.

(3) The department shall ensure that a multistate licensing and application system adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and a multistate licensing and application system pertaining to the breach of security of the system provisions.

(4) The department shall upon written request provide the most recently available audited financial report of the multistate licensing and application system.

Last amended:

Laws 2007, LB 124, § 50

~ Revised Statutes Supplement, 2007