

LEGISLATIVE BILL 218

Approved by the Governor March 20, 2003

Introduced by Banking, Commerce and Insurance Committee:

Quandahl, 31, Chairperson; Foley, 29; Jensen, 20; Johnson, 37;
Mines, 18; Redfield, 12; Tyson, 19

AN ACT relating to loans; to amend sections 45-705, 45-706, 45-709, 45-710, 45-711, 45-714, 45-715, 45-716, and 45-717.01, Reissue Revised Statutes of Nebraska, and sections 45-702, 45-704, 45-707, 45-1007, 45-1024, 45-1025, 45-1033, 45-1066, 76-252, and 76-1014.01, Revised Statutes Supplement, 2002; to change provisions relating to the Mortgage Bankers Registration and Licensing Act, the Nebraska Installment Loan Act, mortgagee liability, and trust deeds; to provide penalties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 45-702, Revised Statutes Supplement, 2002, is amended to read:

45-702. 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) Department means the Department of Banking and Finance;

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

(4) 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 this state or chartered under the laws of any other state and subject to similar supervision and regulation as an industrial loan and investment company chartered under the laws of this state; ~~or installment loan licensees or similar associations organized under the laws of this state and subject to supervision by the department;~~

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

(6) 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;

(7) 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;

(8) 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;

(9) 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;

(10) 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;

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

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

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

Sec. 2. Section 45-704, Revised Statutes Supplement, 2002, is amended to read:

45-704. (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 fifty 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 fifty dollars. Registrations in effect on the effective date of this act shall remain in effect until March 1, 2004.

Sec. 3. Section 45-705, Reissue Revised Statutes of Nebraska, is amended to read:

45-705. (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 provided by the department. The application shall include, but not be 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 applicant, (c) the names of all shareholders, partners, or members of the applicant, (d) a description of the activities of the applicant in such detail as the department may require, and ~~(d)~~ (e) if the applicant is an individual, his or her social security number.

(3) The application required by this section 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 required by this section shall be accompanied by an application fee of three hundred dollars.

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

Sec. 4. Section 45-706, Reissue Revised Statutes of Nebraska, is amended to read:

45-706. (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 the filing of the application and delivery of the bond required under section 45-709 and 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.

(3) Upon the filing of an application, delivery of the bond required under section 45-709, and payment of the required fee, the director may issue the applicant a temporary license pending a final determination by the director granting or denying a license. The director shall issue a temporary

license to any applicant that files an affidavit stating that the applicant was doing business in this state as a mortgage banker on or before January 1, 1989. The temporary license shall be for an initial period of ninety days and may be extended in the director's discretion beyond ninety days upon the request of the applicant or upon the director's request.

~~(4)~~ All initial licenses issued pursuant to subsection ~~(1)~~ of this section shall remain in full force and effect until the next succeeding March 1. Thereafter licenses shall 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 ~~- No license in effect on September 9, 1995, shall be renewed until the licensee has filed with the director~~ the information required by subsection (3) of section 45-705. For the annual renewal of an original license to conduct mortgage banking business under the Mortgage Bankers Registration and Licensing Act, the fee shall be one hundred dollars.

(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.

Sec. 5. Section 45-707, Revised Statutes Supplement, 2002, is amended to read:

45-707. (1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued ~~pursuant to~~ 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: any of the following:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Mortgage Bankers Registration and Licensing Act, ~~ex~~ 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; ~~ex~~

(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 has violated the written restrictions or conditions under which the license was issued;

(i) 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;

(j) The licensee has had a similar license revoked in any other

jurisdiction; or

(k) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the Mortgage Bankers Registration and Licensing 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 ~~subsection (3)~~ of 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.

Sec. 6. Section 45-709, Reissue Revised Statutes of Nebraska, is amended to read:

45-709. (1) An applicant for a license shall file with the department a surety bond in the amount of fifty 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 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.

Sec. 7. Section 45-710, Reissue Revised Statutes of Nebraska, is amended to read:

45-710. (1) The director may examine ~~ex~~ documents and records maintained by a licensee. The director may investigate complaints about a licensee. The director may investigate ~~ex~~ reports of alleged violations by a licensee made to the director. Such investigation or examination by the director shall be restricted to acquiring information from the books, accounts, records, and files maintained by the licensee relevant to the alleged violation or complaint 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 and 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 to the director within thirty days after the director has requested payment. The amount of the fee shall be based on the actual cost of the examination, including travel expenses, as determined by the director. The director may adopt and promulgate rules and regulations which provide for a charge for late payment of the fee not to exceed fifty dollars per day.

(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.

Sec. 8. Section 45-711, Reissue Revised Statutes of Nebraska, is amended to read:

45-711. 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) ~~Not later than January 1, 1996, establish~~ 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 ~~of~~ 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; and

(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; or

(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.

Sec. 9. Section 45-714, Reissue Revised Statutes of Nebraska, is amended to read:

45-714. (1) A licensee, an officer, an employee, or an agent of the licensee shall not:

(a) Assess ~~asses~~ 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, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a mortgage loan;

(h) Record a lien on real property if money is not available for the immediate disbursement to the borrower unless, before that recording, (i) the licensee 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;

(1) 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; or

(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.

(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.

Sec. 10. Section 45-715, Reissue Revised Statutes of Nebraska, is amended to read:

45-715. (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.

Sec. 11. Section 45-716, Reissue Revised Statutes of Nebraska, is amended to read:

45-716. (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 pursuant to sections 8-601 and 8-602. ~~Any money in the Mortgage Bankers Cash Fund on September 9, 1995, shall be transferred to the Financial Institution Assessment Cash Fund on such date.~~

(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.

Sec. 12. Section 45-717.01, Reissue Revised Statutes of Nebraska, is amended to read:

45-717.01. (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 one thousand dollars for each separate violation and (b) the costs of investigation.

(3) ~~(2)~~ If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to ~~subsection (1)~~ of 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.

Sec. 13. Section 45-1007, Revised Statutes Supplement, 2002, is amended to read:

45-1007. (1) Except as otherwise provided in this section, a A license shall not be issued until the applicant gives to the department a bond in the penal sum of ~~two~~ fifty thousand dollars to be executed by the applicant and a surety company ~~approved by the director~~ authorized to do business in the State of Nebraska, conditioned for the faithful performance by the applicant, as a licensee, of the duties and obligations pertaining to the business of lending money and the prompt payment of any judgment recovered against the applicant, as a licensee, under the Nebraska Installment Loan Act.

(2) A person licensed prior to the effective date of this act shall maintain a bond as set forth in subsection (1) of this section, except that the penal sum of such bond shall be two thousand dollars until March 1, 2004, at which time the penal sum shall be fifty thousand dollars.

(3) ~~The required bond shall be renewed and refiled annually on or before March 1 of each year or a substitute bond shall remain in effect or the licensee shall immediately cease making loans, and the license shall be canceled by the director. The bond, until renewed and refiled, shall remain in full force and effect.~~

Sec. 14. Section 45-1024, Revised Statutes Supplement, 2002, is amended to read:

45-1024. (1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may exceed one month by as much as fifteen days and the charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a

first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid

principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees, premiums paid for nonfiling insurance, premiums paid on insurance policies covering tangible personal property securing the loan, title examinations, credit reports, survey, and taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6) (a) Loans secured solely by real estate that are not mortgage loans, as defined in section 45-702, shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real estate and any insurance proceeds payable in connection with such real estate or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6) (b) of this section, loan

origination fees shall not be included in calculating the principal amount of the loan.

~~(7)(a) A licensee making a mortgage loan as defined in subdivision (8) of section 45-702 on real property as defined in subdivision (10) of such section shall comply with subdivisions (1), (2), (3), (4), (6), and (7) of section 45-711.~~

~~(b) A licensee making a loan pursuant to this subsection shall 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 services mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect calls to respond to inquiries from borrowers for a period of ninety days 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 subsection.~~

Sec. 15. Section 45-1025, Revised Statutes Supplement, 2002, is amended to read:

45-1025. (1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part or all of any aggregate indebtedness of the same person. The Except as provided in subsection (2) of this section, the charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 does not exempt the licensee from compliance with the Nebraska Installment Loan Act. ~~except for loans made pursuant to subdivisions (4) and (11) of section 45-101.04.~~

(2)(a) Loans made by a licensee pursuant to subdivision (4) of section 45-101.04 are not subject to the Nebraska Installment Loan Act if such loans are not mortgage loans, as that term is defined in section 45-702.

(b) Loans made by a licensee pursuant to subdivision (11) of section 45-101.04 which are mortgage loans, as that term is defined in section 45-702, are not subject to the Nebraska Installment Loan Act. A licensee making mortgage loans on real property, as that term is defined in section 45-702, shall comply with and be subject to the Mortgage Bankers Registration and Licensing Act with respect to such mortgage loans, except that the licensee shall not be required to obtain a license under the Mortgage Bankers Registration and Licensing Act.

(3) Except as provided in subdivision (2)(a) of section 45-1024, no licensee shall enter into any loan contract under the Nebraska Installment Loan Act ~~at~~ under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-1024 shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-1024, the payment schedule may reduce or omit installment payments. Any loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the violation, shall not on that account be void, but the licensee has no right to collect or receive any interest or charges on such loan. If any interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Sec. 16. Section 45-1033, Revised Statutes Supplement, 2002, is amended to read:

45-1033. (1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act if the director finds: any of the following:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the

act, or any other state or federal law applicable to the conduct of its business; ~~or~~

(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 knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement 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 business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision 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 has violated the written restrictions or conditions under which the license was issued; or

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, 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.

(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) If a licensee fails to renew its license as required by section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, 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 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, 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.

(5) 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.

Sec. 17. Section 45-1066, Revised Statutes Supplement, 2002, is amended to read:

45-1066. Subsection ~~(2)~~ (3) of section 45-1025 and sections 45-1031 and 45-1040 shall not apply to preauthorized loans.

Sec. 18. Section 76-252, Revised Statutes Supplement, 2002, is amended to read:

76-252. When the obligation secured by any mortgage has been satisfied, the mortgagee shall, upon receipt of a written request by the mortgagor or the mortgagor's successor in interest or designated representative or by a holder of a junior trust deed or junior mortgage, execute and deliver a release of mortgage in recordable form to the mortgagor or mortgagor's successor in interest or designated representative, as directed in the written request.

Any mortgagee who fails to deliver such a release within sixty days after receipt of such written request shall be liable to the mortgagor or the mortgagor's successor in interest, as the case may be, for ~~one~~ five thousand dollars or actual damages resulting from the failure, whichever is greater. In any action against the mortgagee pursuant to this section, the court shall award, in addition to the foregoing amounts, ~~the cost of suit~~ court costs, including reasonable attorney's fees, and may further order the mortgagee to

execute a release. Successor in interest of the mortgagor shall include the current owner of the property and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a beneficiary mortgagee.

Sec. 19. Section 76-1014.01, Revised Statutes Supplement, 2002, is amended to read:

76-1014.01. When the obligation secured by any trust deed has been satisfied, the beneficiary shall, upon receipt of a written request by the trustor or the trustor's successor in interest or designated representative or by the holder of a junior trust deed or junior mortgage, deliver to the trustor or trustor's successor in interest or designated representative a reconveyance in recordable form duly executed by the trustee. The reconveyance may designate the grantee therein as the person or persons entitled thereto. The beneficiary under such trust deed shall, upon receipt of a written request, deliver to the trustor or his or her successor in interest, as directed in the written request, the trust deed and the note or other evidence of the obligation so satisfied. If a trustee fails or refuses to execute a reconveyance required by the beneficiary, the beneficiary shall appoint a successor trustee that will execute a reconveyance.

Any beneficiary who fails to deliver such a reconveyance within sixty days after receipt of such written request shall be liable to the trustor or his or her successor in interest, as the case may be, for ~~one~~ five thousand dollars or actual damages resulting from such failure, whichever is greater. In any action against the beneficiary or trustee pursuant to this section, the court shall award, in addition to the foregoing amounts, ~~the cost of suit~~ court costs, including reasonable attorney's fees, and may further order the trustee to reconvey the property. Successor in interest of the trustor shall include the current owner of the property and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a beneficiary.

Sec. 20. Original sections 45-705, 45-706, 45-709, 45-710, 45-711, 45-714, 45-715, 45-716, and 45-717.01, Reissue Revised Statutes of Nebraska, and sections 45-702, 45-704, 45-707, 45-1007, 45-1024, 45-1025, 45-1033, 45-1066, 76-252, and 76-1014.01, Revised Statutes Supplement, 2002, are repealed.