

LEGISLATIVE BILL 163

Approved by the Governor March 15, 1995

Introduced by Landis, 46; Lynch, 13

AN ACT relating to interest, loans, and debt; to amend sections 45-701, 45-702, 45-705, 45-706, 45-710, and 45-717, Reissue Revised Statutes of Nebraska, and sections 45-711 and 45-716, Revised Statutes Supplement, 1994; to change provisions of the Mortgage Bankers Registration and Licensing Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 45-701, Reissue Revised Statutes of Nebraska, is amended to read:

45-701. Sections 45-701 to 45-721 and section 9 of this act shall be known and may be cited as the Mortgage Bankers Registration and Licensing Act.

Sec. 2. Section 45-702, Reissue Revised Statutes of Nebraska, is amended to read:

45-702. For purposes of the Mortgage Bankers Registration and Licensing Act:

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

(2) Department shall mean means the Department of Banking and Finance;

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

(4) Financial institution shall mean 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 shall also mean 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 shall mean means any person licensed under the act;

(6) Mortgage banker shall mean 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 shall mean 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 shall mean 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 shall mean 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 shall mean means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state and is occupied, used, or intended to be occupied or used for residential purposes;

(11) Registered bank holding company shall mean means any (a) one bank holding company registered with the department pursuant to section 8-1202 or 8-1203, (b) bank holding company as defined in section 8-902, or (c) regional out-of-state bank holding company as defined in section 8-902 and on and after January 1, 1991, any bank holding company authorized by section 8-902.02 to own or control banks in this state acting pursuant to the Bank Holding Company Act of 1963;

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

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

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.

(2) Applicants for a license 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, and (c) a description of the activities of the applicant in such detail as the department may require.

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

(5) ~~(4)~~ A license granted under the 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 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 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 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. No license in effect on the effective date of this act 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.

Sec. 5. Section 45-710, Reissue Revised Statutes of Nebraska, is amended to read:

45-710. (1) The director may examine or investigate complaints about or 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.

(2) Upon receipt by a licensee of the director's notice of

investigation and inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act.

(3) ~~(2)~~ 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) ~~(3)~~ 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) ~~(4)~~ 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) ~~(5)~~ Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(7) ~~(6)~~ Complaint files shall be deemed public records.

Sec. 6. Section 45-711, Revised Statutes Supplement, 1994, 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, 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 and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services mortgage loans. Each day

such licensee fails to comply with this subdivision shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act:

(6) ~~(5)~~ Answer in writing, within ten business days of receipt, any written request for payoff information received from a borrower or a borrower's designated representative; and

(7) ~~(6)~~ Execute and deliver a release of mortgage in recordable form or, in the case of a trust deed, execute and deliver a reconveyance in recordable form executed by the trustee within sixty days after the satisfaction of the obligations secured by the mortgage or trust deed.

Sec. 7. Section 45-716, Revised Statutes Supplement, 1994, is amended to read:

45-716. (1) The Mortgage Bankers Cash Fund is hereby created. All fees, charges, and finer 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 fund. The fund shall be used for the purpose of administering and enforcing the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(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. 8. Section 45-717, Reissue Revised Statutes of Nebraska, is amended to read:

45-717. (1) The department may order a licensee to cease and desist whenever the department determines that the licensee 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 licensee that such order has been entered, of the reasons for such order, and that upon receipt within ten business days after the date of the order of written request from the licensee a hearing will be scheduled within ten business days after the date of receipt of the written request unless the licensee consents to a later date. 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) For the purpose of any investigation or proceeding under the 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 a civil contempt.

(4) 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.

(5) 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.

(6) 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 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.

(7) Except when expressly authorized, there shall be no private cause of action for any violation of the act.

(8) No violation of the act shall constitute a defense for nonpayment or other breach by the borrower under the documents evidencing the mortgage loan. 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.

(9) Nothing in the 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.

Sec. 9. (1) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has 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.

(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. 10. Original sections 45-701, 45-702, 45-705, 45-706, 45-710, and 45-717, Reissue Revised Statutes of Nebraska, and sections 45-711 and 45-716, Revised Statutes Supplement, 1994, are repealed.