

MORTGAGE BANKERS

Section 1 would amend section 45-702 of the Mortgage Bankers Registration and Licensing Act to provide that the definition of “financial institution” no longer includes “installment loan licensees.”

Section 2 would amend section 45-705 of the Mortgage Bankers Registration and Licensing Act to provide that no person shall act as a mortgage banker unless he, she, or it is “licensed under the Nebraska Installment Loan Act” (as well as or is licensed or registered with the Department of Banking and Finance as provided in the Mortgage Bankers Registration and Licensing Act).

Section 3 would amend section 45-706 of the Mortgage Bankers Registration and Licensing Act to provide that the Director of Banking may require a mortgage banker licensee to maintain a minimum net worth, proven by a certified audit, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Section 4 would amend section 45-707 of the Mortgage Bankers Registration and Licensing Act to expand the list of acts for which the Director of Banking may suspend or revoke a mortgage banker license. These acts would be:

(1) the licensee has materially violated or demonstrated a continuing pattern of violating “any order, including a cease and desist order, issued under the” Mortgage Bankers Registration and Licensing Act;

(2) the licensee violated a voluntary consent or compliance agreement entered into with the director;

(3) the licensee provided to the director any false or fraudulent misrepresentation 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;

(4) the licensee refused to permit an examination by the director of the licensee’s books and affairs regarding alleged violations or complaints, or the licensee refused or failed to comply with the director’s request for information;

(5) the licensee failed to maintain records relating to each mortgage banking transaction;

(6) the licensee continued employing or contracting with an individual, if such individual is convicted of, pleads guilty to, or is found guilty of (a) a misdemeanor which involves dishonesty, fraud, or any aspect of the mortgage banking business, financial institution business, or installment loan business, or (b) a felony;

(7) the licensee violated the written restrictions or conditions under which the license was issued; and

(8) the licensee, or any officer, director, member, partner, or controlling shareholder, was (a) convicted of any misdemeanor, an element of which is dishonesty or fraud or which involves the mortgage banking business, financial institution business, or installment loan business, or (b) convicted of any felony.

Section 5 would amend section 45-709 of the Mortgage Bankers Registration and Licensing Act to provide that the Director of Banking may require the filing of a new or supplemental surety bond if he or she determines that the fifty-thousand-dollar surety bond required by this section is exhausted or is inadequate.

Section 6 would amend section 45-711 of the Mortgage Bankers Registration and Licensing Act to provide that:

(1) a licensee shall provide annual escrow analysis information and loan payoff information to the borrower “without charge”;

(2) a licensee shall maintain copies of all documents and records relating to each mortgage banking transaction for a period of three years; and

(3) a licensee shall notify the Director of Banking in writing with thirty days after the occurrence of any development, including: (a) bankruptcy or corporate reorganization; (b) business reorganization; (c) institution of license revocation procedures by any other state or jurisdiction; (d) the filing of a criminal indictment or complaint against the licensee or any officer, director, shareholder, partner, member, employee, or agent; (e) the licensee or any officer, director, shareholder, partner, member, employee, or agent, having been convicted of, pled guilty to, or found guilty of (i) a misdemeanor which involves dishonesty, fraud, or any aspect of the mortgage banking business, financial institution business, or installment loan business, or (ii) any felony.

Section 7 would amend section 45-714 of the Mortgage Bankers Registration and Licensing Act to provide that:

(1) a licensee shall not delay closing of a mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(2) a licensee shall not misrepresent 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;

(3) a licensee shall not misrepresent to, or conceal from, an applicant for a mortgage loan or borrower, material facts, terms, or conditions of a transaction;

(4) a licensee shall not 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 a mortgage loan;

(5) a licensee shall not receive compensation for rendering mortgage banking services where 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 mortgage banking services and for real estate broker or agent services;

(6) a licensee shall not advertise, display, distribute, broadcast, or televise any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a mortgage loan;

(7) a licensee shall not record a lien on real property if money is not available for immediate disbursement to the borrower unless, before that recording, the licensee informs the borrower in writing of a definite date by which payment shall be made and obtains the borrower's written permission for the delay;

(8) a licensee shall not fail to account for or deliver personal property obtained in connection with the mortgage banking business;

(9) a licensee shall not fail to disburse, without just cause, any funds in accordance with any agreement; and

(10) a licensee shall not 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 within twelve months after the previous mortgage loan made by the licensee.

This section would provide that any person who violates any of the foregoing shall be guilty of a Class III misdemeanor (maximum: 3 months, or \$500, or both; minimum: none), and shall be liable to the applicant for a mortgage loan or the borrower for the fees, costs, and charges incurred in connection with obtaining the mortgage loan together with damages resulting from such violation and interest from the date of the violation, and costs of suit and attorney's fees.

Section 8 would amend section 45-715 of the Mortgage Bankers Registration and Licensing Act to provide that notices of hearings on proposed rules and regulations to carry out the act, which the Department of Banking and Finance must provide to all licensees, "may be sent electronically."

INSTALLMENT LOANS

Section 9 would amend section 45-1007 of the Nebraska Installment Loan Act to increase the surety bond requirement for installment loan licensees from two thousand dollars to fifty thousand dollars.

Sections 10 and 11 would amend sections 45-1024 and 45-1025 of the Nebraska Installment Loan Act to provide that an installment loan licensee making mortgage loans on real property (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) shall comply with and be subject to the Mortgage Bankers Registration and Licensing Act with respect to such mortgage loans, except that the installment loan licensee shall not be required to obtain a mortgage banker license under the Mortgage Bankers Registration and Licensing Act.

Section 12 would amend section 45-1033 of the Nebraska Installment Loan Act to expand the list of acts for which the Director of Banking may suspend or revoke an installment loan license. These acts would be:

(1) the licensee materially violated or demonstrated a continuing pattern of violating “any order issued under the” Nebraska Installment Loan Act;

(2) the licensee violated a voluntary consent or compliance agreement entered into with the director;

(3) the licensee knowingly provided to the director any false or fraudulent misrepresentation 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 the denial of the license application;

(4) the licensee refused to permit an examination by the director of the licensee’s books and affairs, the licensee refused or failed to comply with the director’s request for information, or the licensee failed to make its annual report;

(5) the licensee failed to maintain records as required by the director;

(6) the licensee continued employing or contracting with an individual, if such individual is convicted of, pleads guilty to, or is found guilty of (a) a misdemeanor which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, the financial institution business, or the installment loan business, or (b) a felony;

(7) the licensee violated the written restrictions or conditions under which the licensee was issued; and

(8) the licensee, or any officer, director, member, partner, or controlling shareholder, was (a) convicted of any misdemeanor, an element of which is dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business, or (b) convicted of a felony.

Section 13 would amend section 45-1066 of the Nebraska Installment Loan Act to harmonize an internal reference.

MORTGAGE

Section 14 would amend section 76-252 of the mortgage statutes to provide that any mortgagee (lender) who fails to deliver to the mortgagor (borrower) a release of mortgage when

the obligation secured by the mortgage has been satisfied, shall be liable to the mortgagor for “five” thousand dollars (increased from “one” thousand dollars) or actual damages resulting from the failure, whichever is greater.

TRUST DEEDS

Section 15 would amend section 76-1014.01 of the Nebraska Trust Deeds Act to provide that any beneficiary (lender) who fails to deliver to the trustor (borrower) a reconveyance when the obligation secured by the trust deed has been satisfied, shall be liable to the trustor for “five” thousand dollars (increased from “one” thousand dollars) or actual damages resulting from such failure, whichever is greater.

MISCELLANEOUS PROVISIONS

Section 16 would provide for repealers.

Explanation of amendments, if any:

Senator David M. Landis, Chairperson