

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 352

Introduced by Scheer, 19.

Read first time January 15, 2015

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Residential Mortgage Licensing Act; to
- 2 amend sections 45-706 and 45-737, Revised Statutes Cumulative
- 3 Supplement, 2014; to change provisions relating to the issuance of a
- 4 mortgage banker license and recordkeeping by licensees; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-706, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 45-706 (1) Upon the filing of an application for a license as a
4 mortgage banker, if the director finds that the character and general
5 fitness of the applicant, the members thereof if the applicant is a
6 partnership, limited liability company, association, or other
7 organization, and the officers, directors, and principal employees if the
8 applicant is a corporation are such that the business will be operated
9 honestly, soundly, and efficiently in the public interest consistent with
10 the purposes of the Residential Mortgage Licensing Act, the director
11 shall issue a license as a mortgage banker to the applicant. The director
12 shall approve or deny an application for a license within ninety days
13 after (a) acceptance of the application; (b) delivery of the bond
14 required under section 45-724; and (c) payment of the required fee.

15 (2) If the director determines that the mortgage banker license
16 application should be denied, the director shall notify the applicant in
17 writing of the denial and of the reasons for the denial. The director
18 shall not deny an application for a mortgage banker license because of
19 the failure to submit information required under the act or rules and
20 regulations adopted and promulgated under the act without first giving
21 the applicant an opportunity to correct the deficiency by supplying the
22 missing information. A decision of the director denying a mortgage banker
23 license application pursuant to the act may be appealed. The appeal shall
24 be in accordance with the Administrative Procedure Act and rules and
25 regulations adopted and promulgated by the department under the act. The
26 director may deny an application for a mortgage banker license
27 application if (a) he or she determines that the applicant does not meet
28 the conditions of subsection (1) of this section or (b) an officer,
29 director, shareholder owning five percent or more of the voting shares of
30 the applicant, partner, or member was convicted of, pleaded guilty to, or
31 was found guilty after a plea of nolo contendere to (i) a misdemeanor

1 under any state or federal law which involves dishonesty or fraud or
2 which involves any aspect of the mortgage banking business, depository
3 institution business, or installment loan company business or (ii) any
4 felony under state or federal law.

5 (3) If an applicant for a mortgage banker license does not complete
6 the license application and fails to respond to a notice or notices from
7 the department to correct the deficiency or deficiencies for a period of
8 one hundred twenty days or more after the date the department sends the
9 initial notice to correct the deficiency, the department may deem the
10 application as abandoned and may issue a notice of abandonment of the
11 application to the applicant in lieu of proceedings to deny the
12 application.

13 (4 3)(a) All initial licenses shall remain in full force and effect
14 until the next succeeding December 31. Mortgage banker licenses may be
15 renewed annually by submitting to the director a request for renewal and
16 any supplemental material as required by the director. The mortgage
17 banker licensee shall certify that the information contained in the
18 license application, as subsequently amended, that is on file with the
19 department and the information contained in any supplemental material
20 previously provided to the department remains true and correct.

21 (b) For the annual renewal of a license to conduct a mortgage
22 banking business under the Residential Mortgage Licensing Act, the fee
23 shall be two hundred dollars plus seventy-five dollars for each branch
24 office, if applicable, and any processing fee allowed under subsection
25 (2) of section 45-748.

26 (5 4)(a) The department may place a mortgage banker licensee that is
27 a sole proprietorship on inactive status for a period of up to twelve
28 months upon receipt of a request from the licensee for inactive status.
29 The request shall include notice that the licensee has temporarily
30 suspended business, is not acting as a mortgage banker in this state, and
31 has no pending customer complaints. The department shall notify the

1 licensee within ten business days as to whether the request has been
2 granted and, if granted, of the date of expiration of the inactive
3 status.

4 (b) If a mortgage banker license becomes inactive under this
5 section, the license shall remain inactive until the license expires, is
6 cancelled, is surrendered, is suspended, is revoked, or is reactivated
7 pursuant to subdivision (d) of this subsection.

8 (c) An inactive mortgage banker licensee may renew such inactive
9 license if the licensee remains otherwise eligible for renewal pursuant
10 to subdivision (~~4~~ ~~3~~)(a) of this section, except for being covered by a
11 surety bond pursuant to section 45-724. Such renewal shall not reactivate
12 the license.

13 (d) The department has the authority to reactivate an inactive
14 mortgage banker license following the department's receipt of a request
15 from the inactive licensee that the licensee intends to resume business
16 as a mortgage banker in this state if the inactive mortgage banker
17 licensee meets the conditions for licensing at the time reactivation is
18 requested, including, but not limited to, coverage by a surety bond
19 pursuant to section 45-724.

20 (e) The department shall issue a notice of cancellation of an
21 inactive mortgage banker license following the expiration of the period
22 of inactive status set by the department pursuant to subdivision (a) of
23 this subsection if the inactive mortgage banker licensee fails to request
24 reactivation of the license prior to the date of expiration.

25 (~~6~~ ~~5~~) The director may require a mortgage banker licensee to
26 maintain a minimum net worth, proven by an audit conducted by a certified
27 public accountant, if the director determines that the financial
28 condition of the licensee warrants such a requirement or that the
29 requirement is in the public interest.

30 Sec. 2. Section 45-737, Revised Statutes Cumulative Supplement,
31 2014, is amended to read:

1 45-737 A licensee licensed as a mortgage banker shall:

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

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

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

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

21 (a) The name and address of the licensee;

22 (b) The name and address of the borrower;

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

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

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

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

30 (A) Payments applied to loan principal;

31 (B) Payments applied to interest;

1 (C) Payments applied to real estate taxes;

2 (D) Payments for real property insurance premiums; and

3 (E) All other withdrawals; and

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

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

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

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

10 (5) Establish and maintain a toll-free telephone number or accept
11 collect telephone calls to respond to inquiries from borrowers, if the
12 licensee services residential mortgage loans. If a licensee ceases to
13 service residential mortgage loans, it shall continue to maintain a toll-
14 free telephone number or accept collect telephone calls to respond to
15 inquiries from borrowers for a period of twelve months after the date the
16 licensee ceased to service residential mortgage loans. A telephonic
17 messaging service which does not permit the borrower an option of
18 personal contact with an employee, agent, or contractor of the licensee
19 shall not satisfy the conditions of this section. Each day such licensee
20 fails to comply with this subdivision shall constitute a separate
21 violation of the Residential Mortgage Licensing Act;

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

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

31 (8) Maintain a copy of all documents and records relating to each

1 residential mortgage loan and application for a residential mortgage
2 loan, including, but not limited to, loan applications, federal Truth in
3 Lending Act statements, good faith estimates, appraisals, notes, rights
4 of rescission, and mortgages or trust deeds for a period of three ~~two~~
5 years after the date the residential mortgage loan is funded or the loan
6 application is denied or withdrawn;

7 (9) Notify the director in writing or through the Nationwide
8 Mortgage Licensing System and Registry within three business days after
9 the occurrence of any of the following:

10 (a) The filing of a voluntary petition in bankruptcy by the licensee
11 or notice of a filing of an involuntary petition in bankruptcy against
12 the licensee;

13 (b) The licensee has lost the ability to fund a loan or loans after
14 it had made a loan commitment or commitments and approved a loan
15 application or applications;

16 (c) Any other state or jurisdiction institutes license denial, cease
17 and desist, suspension, or revocation procedures against the licensee;

18 (d) The attorney general of any state, the Consumer Financial
19 Protection Bureau, or the Federal Trade Commission initiates an action to
20 enforce consumer protection laws against the licensee or any of the
21 licensee's officers, directors, shareholders, partners, members,
22 employees, or agents;

23 (e) The Federal National Mortgage Association, Federal Home Loan
24 Mortgage Corporation, Federal Housing Administration, or Government
25 National Mortgage Association suspends or terminates the licensee's
26 status as an approved seller or seller and servicer;

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

30 (g) The licensee or any of the licensee's officers, directors,
31 shareholders, partners, members, employees, or agents was convicted of,

1 pleaded guilty to, or was found guilty after a plea of nolo contendere to
2 (i) a misdemeanor under state or federal law which involves dishonesty or
3 fraud or which involves any aspect of the mortgage banking business,
4 depository institution business, or installment loan company business or
5 (ii) any felony under state or federal law; and

6 (10) Notify the director in writing or through the Nationwide
7 Mortgage Licensing System and Registry within thirty days after the
8 occurrence of a material development other than as described in
9 subdivision (9) of this section, including, but not limited to, any of
10 the following:

11 (a) Business reorganization;

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

14 (c) The establishment of a branch office. Notice of such
15 establishment shall be on a form prescribed by the department and
16 accompanied by a fee of seventy-five dollars for each branch office;

17 (d) The relocation or closing of a branch office; or

18 (e) The entry of an order against the licensee or any of the
19 licensee's officers, directors, shareholders, partners, members,
20 employees, or agents, including orders to which the licensee or other
21 parties consented, by any other state or federal regulator.

22 Sec. 3. Original sections 45-706 and 45-737, Revised Statutes
23 Cumulative Supplement, 2014, are repealed.