

LEGISLATIVE BILL 892

Approved by the Governor March 3, 2010

Introduced by Pahls, 31; Pirsch, 4.

FOR AN ACT relating to banking and finance; to amend sections 45-101.04 and 45-1068, Reissue Revised Statutes of Nebraska, section 45-1005, Revised Statutes Cumulative Supplement, 2008, and sections 8-702, 45-701, 45-702, 45-704, 45-705, 45-724, 45-725, 45-726, 45-728, 45-730, 45-733, 45-737, 45-741, 45-742, 45-748, 45-749, 45-1002, 45-1018, 45-1033.01, and 45-1033.02, Revised Statutes Supplement, 2009; to change provisions relating to federal deposit insurance requirements, the Residential Mortgage Licensing Act, the Nebraska Installment Loan Act, and reverse-mortgage loans; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 8-702, Revised Statutes Supplement, 2009, is amended to read:

8-702 (1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) (a) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (i) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and (ii) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in ~~this subsection~~ subdivision (2)(a) of this section shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in ~~this subsection~~ subdivision (2)(a) of this section in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with ~~this subsection~~ subdivision (2)(a) of this section with the Department of Banking and Finance.

(b) Effective July 31, 2010, or within sixty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting such registrations, whichever occurs later, any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702,

by furnishing the following information concerning the employees' identity identities to the Nationwide Mortgage Licensing System and Registry:

(i) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(ii) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency, except that such charter shall not be automatically forfeited for failure to comply with subdivision (2)(b) of this section if the banking institution cures such violation within sixty days after receipt of notice of such violation from the Department of Banking and Finance. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Sec. 2. Section 45-101.04, Reissue Revised Statutes of Nebraska, is amended to read:

45-101.04 The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, the Nebraska Installment Loan Act, subsection (4) of section 8-319, or sections 8-815 to 8-829;

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (15) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or secured by real property when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance except for licensees operating under the Nebraska Installment Loan Act, (b) by any financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(11) Loans secured solely by real property when such loans are (a) made by licensees operating under the Nebraska Installment Loan Act and (b) made to finance or refinance the purchase of the property or construction on or improvements to the property, if the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and

45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan;

(12) Loans secured by a reverse mortgage pursuant to section ~~45-1068~~, 5 of this act;

(13) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; or

(14) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Sec. 3. Section 45-701, Revised Statutes Supplement, 2009, is amended to read:

45-701 Sections 45-701 to 45-754 and section 5 of this act shall be known and may be cited as the Residential Mortgage Licensing Act.

Sec. 4. Section 45-702, Revised Statutes Supplement, 2009, is amended to read:

45-702 For purposes of the Residential Mortgage Licensing Act:

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

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

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

(7) Depository institution means any person (a) 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, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

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

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent,

grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) 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 a residential mortgage loan;

(16) (a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

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

(20) 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;

(21) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

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

(23) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and

controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

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

(25) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(26) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(27) Reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of section 5 of this act;

~~(27)~~ (28) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

~~(28)~~ (29) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

~~(29)~~ (30) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Sec. 5. (1) Reverse-mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a reverse-mortgage loan; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the residential real estate; and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a reverse-mortgage loan provides for periodic advances to a borrower.

(2) Reverse-mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(3) A licensee may, in connection with a reverse-mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the owner-occupied principal residence at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the licensee, and (c) such other fees as are necessary and required, including fees for inspections, insurance, appraisals, and surveys.

(4) Licensees failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit to the borrower an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the licensee failed to make.

Sec. 6. Section 45-704, Revised Statutes Supplement, 2009, is amended to read:

45-704 (1) Notwithstanding any other provision of the Residential Mortgage Licensing Act, no person exempt from licensing under section 45-703 who employs or enters into an independent agent agreement with an individual who is required to obtain a mortgage loan originator license in this state

pursuant to section 45-727 shall act as a mortgage banker 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 a form prescribed by the department. The ~~forms~~ form shall contain such information as the department may prescribe as necessary or appropriate, including, but not limited to, (a) all addresses at which business is to be conducted, (b) the names and titles of each director and principal officer of the business, and (c) a description of the activities of the applicant in such detail as the department may require.

(3) The registration statement required in subsection (2) of this section shall be accompanied by a registration fee of two hundred dollars.

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

(5) A registrant shall maintain a surety bond as required by section 45-724, submit mortgage reports of condition as required by section 45-726, and comply with the requirements of section 45-735 pertaining to the employment of mortgage loan originators.

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

(7) After original registration, all registrations shall remain in full force and effect until the next succeeding December 31. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of one hundred dollars.

(8) (a) If a registrant fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the registration.

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

Sec. 7. Section 45-705, Revised Statutes Supplement, 2009, 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 as a mortgage banker, is registered with the department as provided in section 45-704, is licensed under the Nebraska Installment Loan Act, or is otherwise exempt from the act pursuant to section 45-703.

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

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

(4) The application for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (2) of section 45-748.

(5) The director may prescribe that the application for a license as a mortgage banker include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nationwide Mortgage Licensing System and Registry. If the applicant is a partnership, association, corporation, or other form of business organization, the director may require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (2) of section 45-748,

receipt of criminal history record information by a private person or entity is prohibited.

(6) A license as a mortgage banker granted under the Residential Mortgage Licensing Act shall not be assignable.

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

Sec. 8. Section 45-724, Revised Statutes Supplement, 2009, is amended to read:

45-724 (1) Except as provided in subsection (2) of this section, an applicant for a mortgage banker license or registration shall file with the department a surety bond in the amount of one hundred thousand dollars, furnished by a surety company authorized to do business in the State of Nebraska. The surety bond also shall cover all mortgage loan originators who are employees or independent agents of the applicant. 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 or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, 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~~ subsection shall satisfy the requirements of this section. The bond or a substitute bond shall remain in effect during all periods of licensing or registration.

(2) Upon filing of the mortgage report of condition required by section 45-726, a mortgage banker licensee or registrant shall maintain or increase its surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding calendar year in accordance with the following table. A licensee or registrant may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department.

Dollar Amount of Closed

| Residential Mortgage Loans | Surety Bond Required |
|------------------------------------|----------------------|
| \$0.00 to \$5,000,000.00 | \$100,000.00 |
| \$5,000,000.01 to \$10,000,000.00 | \$125,000.00 |
| \$10,000,000.01 to \$25,000,000.00 | \$150,000.00 |
| Over \$25,000,000.00 | \$200,000.00 |

(3) Should the department determine that a mortgage banker licensee or registrant does not maintain a surety bond in the amount required by subsection (2) of this section, the department shall give written notification to the mortgage banker licensee or registrant requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) of this section.

(4) 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 ~~subsections (1) and subsection (1) or (2)~~ subsection (1) or (2) of this section is exhausted or is inadequate for any reason, including the financial condition of the licensee, the registrant, or the applicant for a license or registration. The new or supplemental bond shall not exceed one million dollars.

Sec. 9. Section 45-725, Revised Statutes Supplement, 2009, is amended to read:

45-725 (1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Residential Mortgage Licensing Act without first giving thirty days' notice to the department on ~~forms~~ a form prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

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

(3) An acquisition may be made prior to the expiration of the

disapproval period if the director issues written notice of his or her intent not to disapprove the action.

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

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

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

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

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

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

Sec. 10. Section 45-726, Revised Statutes Supplement, 2009, is amended to read:

45-726 Each licensed mortgage banker, registrant, and installment loan company shall submit to the Nationwide Mortgage Licensing System and Registry mortgage reports of condition, which shall be in such form and shall contain such information as the department may require.

Sec. 11. Section 45-728, Revised Statutes Supplement, 2009, is amended to read:

45-728 (1) An applicant for a license shall apply ~~in~~ on a form as prescribed by the director.

(2) The application for a license as a mortgage loan originator shall be accompanied by an application fee of one hundred fifty dollars, plus the cost of the criminal history background check required by subsection (3) of this section and any processing fee allowed under subsection (2) of section 45-748.

(3) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(a) Fingerprints for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and

(b) Personal history and experience in a ~~form~~ format prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in ~~section 603(p) of the federal Fair Credit Reporting Act,~~ 15 U.S.C. 1681a(p), as the act such section existed on January 1, 2009+ 2010; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(4) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivisions (3)(a) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency.

(5) For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of subdivisions (3)(b)(i) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

Sec. 12. Section 45-730, Revised Statutes Supplement, 2009, is amended to read:

45-730 (1) In order to meet the prelicensing education ~~requirement~~ requirements referred to in subdivision (1)(d) of section 45-729, an individual shall complete at least twenty hours of education approved in

accordance with subsection (2) of this section, which shall include at least the following:

(a) Three hours of instruction in federal law and regulations regarding mortgage origination;

(b) Three hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(4) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(6) An individual who previously held a mortgage loan originator license applying to be licensed again shall prove that he or she has either (a) completed all of the continuing education requirements for the year in which the license was last held or (b) made up any deficiency in continuing education as provided by subsection (8) of section 45-733.

Sec. 13. Section 45-733, Revised Statutes Supplement, 2009, is amended to read:

45-733 (1) A licensed mortgage loan originator shall complete annually at least eight hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three hours of instruction in federal laws and regulations regarding mortgage origination;

(b) Two hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator, an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) A licensed mortgage loan originator:

(a) Shall only receive credit for a continuing education course in the year in which the course is taken except as provided in subsection (8) of this section; and

(b) Shall not take the same approved course in the same or consecutive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(7) An individual having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1)(a), (b), and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in this state.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new license or

renewal license. Such individual may make up any deficiency in continuing education as established by rule, regulation, or order of the director if such individual meets the requirements of subdivision (2)(a) of section 45-732 and has paid the new application fee as provided by subsection (2) of section 45-728 or the reinstatement fee as provided by subdivision (4)(b) of section 45-742.

Sec. 14. Section 45-737, Revised Statutes Supplement, 2009, is amended to read:

45-737 A licensee shall:

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

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

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

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

(a) The name and address of the licensee;

(b) The name and address of the borrower;

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

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

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

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

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

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

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

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

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

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential 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 residential 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 Residential Mortgage Licensing Act;

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

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

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential 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 residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing within three business days after the occurrence of any of the following:

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

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

(c) Any other state or jurisdiction has invoked suspension or revocation procedures against the licensee;

(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, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through an electronic method as prescribed by the director within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

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

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

(d) The closing of a branch office.

Sec. 15. Section 45-741, Revised Statutes Supplement, 2009, is amended to read:

45-741 (1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, registrant, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding, including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(a) Criminal, civil, and administrative history information;

(b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(p), as the act such section existed on January 1, 2009+ 2010; and

(c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such licensee, registrant, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, registrant, individual, or person subject to the act, concerning their business. the business of the licensee, registrant, individual, or person subject to the act.

(4) Each licensee, registrant, individual, or person subject to the

act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions ~~in a format on a form~~ prescribed by the director; or
- (c) Such other information deemed necessary to carry out the purposes of this section.

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

(6) For the purpose of any investigation, examination, 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 civil contempt.

(7) In conducting an examination or investigation under this section, the director may rely on reports made by the licensee or registrant 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.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, registrant, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, registrant, individual, or person subject to the act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

(9) If the director receives a complaint or other information concerning noncompliance with the act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, registrant, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

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

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

(13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

Sec. 16. Section 45-742, Revised Statutes Supplement, 2009, is amended to read:

45-742 (1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

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

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

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

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the 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) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 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 45-737 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, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual, (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated, (ii) has a mortgage loan originator license which has been suspended by the director, or (iii) while previously associated in any other capacity with another licensee, was the subject of a complaint under the act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

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

(k) 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, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

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

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

(2) Except as provided in this section, a license shall not be

revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the 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 45-743 for acts committed before the surrender. The director's approval of such license surrender shall not be required unless the director has commenced an examination or investigation pursuant to section 45-741 or has commenced a proceeding to revoke or suspend the licensee's license or impose an administrative fine pursuant to this section.

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

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

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

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the revocation, suspension, cancellation, or expiration.

Sec. 17. Section 45-748, Revised Statutes Supplement, 2009, is amended to read:

45-748 (1) The department shall require mortgage bankers, registrants, and mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements, as necessary. The requirements may include, but not be limited to:

(a) Background checks of mortgage bankers, registrants, and mortgage loan originators, including, but not limited to:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with the prelicensure education and testing and continuing education requirements as provided in the Residential Mortgage Licensing Act;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-749.

(4) The director shall establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Sec. 18. Section 45-749, Revised Statutes Supplement, 2009, is amended to read:

45-749 (1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

~~(1)~~ (a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

~~(2)~~ For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or by order of the director;

~~(3)~~ (b) Information or material that is subject to a privilege or confidentiality under subdivision ~~(1)~~ (1)(a) of this section shall not be subject to:

~~(a)~~ (i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

~~(b)~~ (ii) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

~~(4)~~ (c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision ~~(1)~~ (1)(a) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

~~(5)~~ (d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, ~~mortgage bankers and mortgage loan originators~~ applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or by order of the director.

Sec. 19. Section 45-1002, Revised Statutes Supplement, 2009, is amended to read:

45-1002 (1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

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

(d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

(e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

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

(g) Financial institution has the same meaning as in section 8-101;

(h) Licensee means any person who obtains a license under the act;

(i)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in ~~any such clause,~~ subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(j) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(k) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(1) 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.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Sec. 20. Section 45-1005, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1005 Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of the Nebraska Installment Loan Act shall apply to the department for the license under oath, on ~~forms~~ a form prescribed by the department, and pay an original license fee of five hundred dollars. If the applicant is an individual, the application shall include the applicant's social security number.

Sec. 21. Section 45-1018, Revised Statutes Supplement, 2009, is amended to read:

45-1018 (1) ~~Prior to December 31, 2010,~~ a A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as

the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) Effective on January 1, 2011, a licensee shall submit a mortgage report of condition, ~~including financial statements which report the licensee's earnings,~~ as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

Sec. 22. Section 45-1033.01, Revised Statutes Supplement, 2009, is amended to read:

45-1033.01 (1) The department shall require licensees to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but not be limited to:

(a) Background checks of ~~mortgage bankers, registrants, and mortgage loan originators,~~ applicants and licensees, including, but not limited to:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with prelicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Installment Loan Act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act pertaining to residential mortgage loans, as defined in section 45-702, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-1033.02.

(4) The director shall establish a process whereby ~~mortgage bankers, registrants, and mortgage loan originators~~ applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Sec. 23. Section 45-1033.02, Revised Statutes Supplement, 2009, is amended to read:

45-1033.02 (1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

~~(1)~~ (a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the

loss of confidentiality protections provided by federal or state law;

~~(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director;~~

~~(3) (b) Information or material that is subject to a privilege or confidentiality under subdivision ~~(1)~~ (1)(a) of this section shall not be subject to:~~

~~(a) (i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or~~

~~(b) (ii) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;~~

~~(4) (c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision ~~(1)~~ (1)(a) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and~~

~~(5) (d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage bankers and mortgage loan originators applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.~~

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Sec. 24. Section 45-1068, Reissue Revised Statutes of Nebraska, is amended to read:

45-1068 (1) For purposes of this section, reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real ~~property, estate,~~ (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the ~~property residential real estate~~ given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of this section.

(2) Reverse-mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a reverse-mortgage loan; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the ~~property, residential real estate;~~ and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a reverse-mortgage loan provides for periodic advances to a borrower.

(3) Reverse-mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(4) A licensee may, in connection with a reverse-mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the ~~home~~ owner-occupied principal residence at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the licensee, and (c) such other fees as are necessary and required, including fees for inspections, insurance, appraisals, and surveys.

(5) Licensees failing to make loan advances as required in the loan

documents and failing to cure the default as required in the loan documents shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the licensee failed to make.

Sec. 25. Original sections 45-101.04 and 45-1068, Reissue Revised Statutes of Nebraska, section 45-1005, Revised Statutes Cumulative Supplement, 2008, and sections 8-702, 45-701, 45-702, 45-704, 45-705, 45-724, 45-725, 45-726, 45-728, 45-730, 45-733, 45-737, 45-741, 45-742, 45-748, 45-749, 45-1002, 45-1018, 45-1033.01, and 45-1033.02, Revised Statutes Supplement, 2009, are repealed.

Sec. 26. Since an emergency exists, this act takes effect when passed and approved according to law.