

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 184

FINAL READING

Introduced by Lindstrom, 18.

Read first time January 10, 2017

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to loan brokers; to amend sections 45-191.01
- 2 and 45-191.04, Reissue Revised Statutes of Nebraska, and section
- 3 45-190, Revised Statutes Cumulative Supplement, 2016; to redefine a
- 4 term; to change provisions relating to loan brokerage agreements,
- 5 disclosure documents, and rights to cancel; and to repeal the
- 6 original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-190, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 45-190 For purposes of sections 45-189 to 45-191.11, unless the
4 context otherwise requires:

5 (1) Advance fee means any fee, deposit, or consideration which is
6 assessed or collected, prior to the closing of a loan, by a loan broker
7 and includes, but is not limited to, any money assessed or collected for
8 processing, appraisals, credit checks, consultations, or expenses;

9 (2) Borrower means a person obtaining or desiring to obtain a loan
10 of money;

11 (3) Department means the Department of Banking and Finance;

12 (4) Director means the Director of Banking and Finance;

13 (5)(a) Loan broker means any person who:

14 (i) For or in expectation of consideration from a borrower,
15 procures, attempts to procure, arranges, or attempts to arrange a loan of
16 money for a borrower;

17 (ii) For or in expectation of consideration from a borrower, assists
18 a borrower in making an application to obtain a loan of money;

19 (iii) Is employed as an agent for the purpose of soliciting
20 borrowers as clients of the employer; or

21 (iv) Holds himself or herself out, through advertising, signs, or
22 other means, as a loan broker; and

23 (b) Loan broker does not include: (i) A bank, bank holding company,
24 trust company, savings and loan association or subsidiary of a savings
25 and loan association, building and loan association, or credit union
26 which is subject to regulation or supervision under the laws of the
27 United States or any state; (ii) a mortgage banker or an installment loan
28 company licensed or registered under the laws of the State of Nebraska;
29 (iii) a credit card company; (iv) an insurance company authorized to
30 conduct business under the laws of the State of Nebraska; or (v) a lender
31 approved by the Federal Housing Administration or the United States

1 Department of Veterans Affairs, if the loan is secured or covered by
2 guarantees, commitments, or agreements to purchase or take over the same
3 by the Federal Housing Administration or the United States Department of
4 Veterans Affairs;

5 (6) Loan brokerage agreement means any agreement for services
6 between a loan broker and a borrower; and

7 (7) Person means natural persons, corporations, trusts,
8 unincorporated associations, joint ventures, partnerships, and limited
9 liability companies.

10 Sec. 2. Section 45-191.01, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 45-191.01 (1) ~~Prior to a At least forty-eight hours before the~~
13 borrower signing signs a loan brokerage agreement, the loan broker shall
14 give the borrower a written disclosure statement. The cover sheet of the
15 disclosure statement shall have printed, in at least ten-point boldface
16 capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The
17 following statement, printed in at least ten-point type, shall appear
18 under the title:

19 THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE,
20 RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE
21 INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED
22 BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A
23 LOAN BROKERAGE AGREEMENT.

24 Only the title and the statement shall appear on the cover sheet.

25 (2) The body of the disclosure statement shall contain the following
26 information:

27 (a) The name, street address, and telephone number of the loan
28 broker, the names under which the loan broker does, has done, or intends
29 to do business, the name and street address of any parent or affiliated
30 company, and the electronic mail and Internet address of the loan broker,
31 if any;

1 (b) A statement as to whether the loan broker does business as an
2 individual, a partnership, a corporation, or another ~~other~~ organizational
3 form, including identification of the state of incorporation or
4 formation;

5 (c) How long the loan broker has done business;

6 (d) The number of loan brokerage agreements the loan broker has
7 entered into in the previous twelve months;

8 (e) The number of loans the loan broker has obtained for borrowers
9 in the previous twelve months;

10 (f) A description of the services the loan broker agrees to perform
11 for the borrower;

12 (g) The conditions under which the borrower is obligated to pay the
13 loan broker. This disclosure shall be in boldface type;

14 (h) The names, titles, and principal occupations for the past five
15 years of all officers, directors, or persons occupying similar positions
16 responsible for the loan broker's business activities;

17 (i) A statement whether the loan broker or any person identified in
18 subdivision (h) of this subsection:

19 (i) Has been convicted of a felony or misdemeanor or pleaded nolo
20 contendere to a felony or misdemeanor charge if such felony or
21 misdemeanor involved fraud, embezzlement, fraudulent conversion, or
22 misappropriation of property;

23 (ii) Has been held liable in a civil action by final judgment or
24 consented to the entry of a stipulated judgment if the civil action
25 alleged fraud, embezzlement, fraudulent conversion, or misappropriation
26 of property or the use of untrue or misleading representations in an
27 attempt to sell or dispose of real or personal property or the use of
28 unfair, unlawful, or deceptive business practices; or

29 (iii) Is subject to any currently effective injunction or
30 restrictive order relating to business activity as the result of an
31 action brought by a public agency or department including, but not

1 limited to, action affecting any vocational license; and

2 (j) Any other information the director requires.

3 Sec. 3. Section 45-191.04, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 45-191.04 (1) A loan brokerage agreement shall be in writing and
6 shall be signed by the loan broker and the borrower. The loan broker
7 shall furnish the borrower a copy of such signed loan brokerage agreement
8 at the time the borrower signs it.

9 (2) The borrower has the right to cancel a loan brokerage agreement
10 for any reason at any time within five ~~three~~ business days after the date
11 the parties sign the agreement. The loan brokerage agreement shall set
12 forth the borrower's right to cancel and the procedures to be followed
13 when an agreement is canceled.

14 (3) A loan brokerage agreement shall set forth in at least ten-point
15 type, or handwriting of at least equivalent size, the following:

16 (a) The terms and conditions of payment;

17 (b) A full and detailed description of the acts or services the loan
18 broker will undertake to perform for the borrower;

19 (c) The loan broker's principal business address, telephone number,
20 and electronic mail and Internet address, if any, and the name, address,
21 telephone number, and electronic mail and Internet address, if any, of
22 its agent in the State of Nebraska authorized to receive service of
23 process;

24 (d) The business form of the loan broker, whether a corporation,
25 partnership, limited liability company, or otherwise; and

26 (e) The following notice of the borrower's right to cancel the loan
27 brokerage agreement pursuant to this section:

28 "You have five ~~three~~ business days in which you may cancel this
29 agreement for any reason by mailing or delivering written notice to the
30 loan broker. The five ~~three~~ business days shall expire
31 on (last date to mail or deliver notice), and notice

1 of cancellation should be mailed
2 to (loan broker's name and
3 business street address). If you choose to mail your notice, it must be
4 placed in the United States mail properly addressed, first-class postage
5 prepaid, and postmarked before midnight of the above date. If you choose
6 to deliver your notice to the loan broker directly, it must be delivered
7 to the loan broker by the end of the normal business day on the above
8 date. Within five business days after receipt of the notice of
9 cancellation, the loan broker shall return to you all sums paid by you to
10 the loan broker pursuant to this agreement."

11 The notice shall be set forth immediately above the place at which
12 the borrower signs the loan brokerage agreement.

13 Sec. 4. Original sections 45-191.01 and 45-191.04, Reissue Revised
14 Statutes of Nebraska, and section 45-190, Revised Statutes Cumulative
15 Supplement, 2016, are repealed.