

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 290

Introduced by Pirsch, 4.

Read first time January 16, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Residential Mortgage Licensing Act; to
2 amend sections 45-727, 45-737, and 45-741, Reissue
3 Revised Statutes of Nebraska, and sections 45-701 and
4 45-729, Revised Statutes Cumulative Supplement, 2012; to
5 eliminate obsolete provisions; to change provisions
6 relating to notice, certain licensee duties, and Director
7 of Banking and Finance powers; to harmonize provisions;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-701, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 45-701 Sections 45-701 to 45-754 and section 5 of this
4 act shall be known and may be cited as the Residential Mortgage
5 Licensing Act.

6 Sec. 2. Section 45-727, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 45-727 (1) An individual, unless specifically exempted
9 from the Residential Mortgage Licensing Act under section 45-703,
10 shall not engage in, or offer to engage in, the business of a
11 mortgage loan originator with respect to any residential real estate
12 or dwelling located or intended to be located in this state without
13 first obtaining and maintaining annually a license under the act.
14 Each licensed mortgage loan originator shall obtain and maintain a
15 valid unique identifier issued by the Nationwide Mortgage Licensing
16 System and Registry.

17 ~~(2) In order to facilitate an orderly transition to~~
18 ~~licensing and minimize disruption in the mortgage marketplace, the~~
19 ~~effective date for subsection (1) of this section is July 31, 2010.~~

20 ~~(3)~~(2) An independent agent shall not engage in the
21 activities as a loan processor or underwriter unless such independent
22 agent loan processor or underwriter obtains and maintains a license
23 under subsection (1) of this section. Each independent agent loan
24 processor or underwriter licensed as a mortgage loan originator shall
25 obtain and maintain a valid unique identifier issued by the

1 Nationwide Mortgage Licensing System and Registry.

2 ~~(4)~~(3) For the purposes of implementing an orderly and
3 efficient licensing process, the director may adopt and promulgate
4 licensing rules or regulations and interim procedures for licensing
5 and acceptance of applications. For previously registered or licensed
6 individuals, the director may establish expedited review and
7 licensing procedures.

8 Sec. 3. Section 45-729, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 45-729 (1) The director shall not issue a mortgage loan
11 originator license unless the director makes at a minimum the
12 following findings:

13 (a) The applicant has never had a mortgage loan
14 originator license revoked in any governmental jurisdiction, except
15 that a subsequent formal vacation of such revocation shall not be
16 deemed a revocation;

17 (b) The applicant has not been convicted of, or pleaded
18 guilty or nolo contendere or its equivalent to, in a domestic,
19 foreign, or military court:

20 (i) A misdemeanor under any state or federal law which
21 involves dishonesty or fraud or which involves any aspect of the
22 business of a mortgage banker, depository institution, or installment
23 loan company unless such individual has received a pardon for such
24 conviction or such conviction has been expunged, except that the
25 director may consider the underlying crime, facts, and circumstances

1 of a pardoned or expunged conviction in determining the applicant's
2 eligibility for a license pursuant to subdivision (c) of this
3 subsection; or

4 (ii) Any felony under state or federal law unless such
5 individual has received a pardon for such conviction or such
6 conviction has been expunged, except that the director may consider
7 the underlying crime, facts, and circumstances of a pardoned or
8 expunged conviction in determining the applicant's eligibility for a
9 license pursuant to subdivision (c) of this subsection;

10 (c) The applicant has demonstrated financial
11 responsibility, character, and general fitness such as to command the
12 confidence of the community and to warrant a determination that the
13 mortgage loan originator will operate honestly, fairly, and
14 efficiently within the purposes of the Residential Mortgage Licensing
15 Act. For purposes of this subsection, an individual has shown that he
16 or she is not financially responsible when he or she has shown a
17 disregard in the management of his or her own financial condition.
18 The director may consider the following factors in making a
19 determination as to financial responsibility:

20 (i) The applicant's current outstanding judgments except
21 judgments solely as a result of medical expenses;

22 (ii) The applicant's current outstanding tax liens or
23 other government liens and filings;

24 (iii) The applicant's foreclosures within the past three
25 years; and

1 (iv) A pattern of seriously delinquent accounts within
2 the past three years by the applicant;

3 (d) The applicant has completed the prelicensing
4 education requirements described in section 45-730;

5 (e) The applicant has passed a written test that meets
6 the test requirement described in section 45-731; and

7 (f) The applicant is covered by a surety bond as required
8 pursuant to section 45-724 or a supplemental surety bond as required
9 pursuant to section 45-1007.

10 (2)(a) If the director determines that a mortgage loan
11 originator license application should be denied, the director shall
12 notify the applicant in writing of the denial and of the reasons for
13 the denial.

14 (b) The director shall not deny an application for a
15 mortgage loan originator license because of the failure to submit
16 information required under the act or rules and regulations adopted
17 and promulgated under the act without first giving the applicant an
18 opportunity to correct the deficiency by supplying the missing
19 information.

20 (c) If an applicant for a mortgage loan originator
21 license does not complete his or her license application and fails to
22 respond to a notice or notices from the department to correct the
23 deficiency or deficiencies for a period of one hundred twenty days or
24 more after ~~mailing of the date the department sends~~ the initial
25 notice after initial filing of the application, the department may

1 deem the application as abandoned and may issue a notice of
2 abandonment of the application to the applicant in lieu of
3 proceedings to deny the application.

4 (d) A decision of the director denying a mortgage loan
5 originator license application pursuant to the Residential Mortgage
6 Licensing Act may be appealed. The appeal shall be in accordance with
7 the Administrative Procedure Act and rules and regulations adopted
8 and promulgated by the department.

9 (3) A mortgage loan originator license shall not be
10 assignable.

11 Sec. 4. Section 45-737, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 45-737 A licensee licensed as a mortgage banker shall:

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

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

20 (3) Pay any penalty incurred by the borrower because of
21 the failure of the licensee to make the payments required in
22 subdivisions (1) and (2) of this section unless the licensee
23 establishes that the failure to timely make the payments was due
24 solely to the fact that the borrower was sent a written notice of the
25 amount due more than fifteen calendar days before the due date to the

1 borrower's last-known address and failed to timely remit the amount
2 due to the licensee;

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

- 9 (a) The name and address of the licensee;
- 10 (b) The name and address of the borrower;
- 11 (c) A summary of the escrow account activity during the
12 year which includes all of the following:
- 13 (i) The balance of the escrow account at the beginning of
14 the year;
- 15 (ii) The aggregate amount of deposits to the escrow
16 account during the year; and
- 17 (iii) The aggregate amount of withdrawals from the escrow
18 account for each of the following categories:
- 19 (A) Payments applied to loan principal;
- 20 (B) Payments applied to interest;
- 21 (C) Payments applied to real estate taxes;
- 22 (D) Payments for real property insurance premiums; and
- 23 (E) All other withdrawals; and
- 24 (d) A summary of loan principal for the year as follows:
- 25 (i) The amount of principal outstanding at the beginning

1 of the year;

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

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

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

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

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

5 (8) Maintain a copy of all documents and records relating
6 to each residential mortgage loan and application for a residential
7 mortgage loan, including, but not limited to, loan applications,
8 federal Truth in Lending Act statements, good faith estimates,
9 appraisals, notes, rights of rescission, and mortgages or trust deeds
10 for a period of two years after the date the residential mortgage
11 loan is funded or the loan application is denied or withdrawn;

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

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

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

21 (c) Any other state or jurisdiction ~~has invoked~~
22 institutes license denial, cease and desist, suspension, or
23 revocation procedures against the licensee;

24 (d) The attorney general of any state, the Consumer
25 Financial Protection Bureau, or the Federal Trade Commission

1 initiates an action to enforce consumer protection laws against the
2 licensee or any of the licensee's officers, directors, shareholders,
3 partners, members, employees, or agents;

4 (e) The Federal National Mortgage Association, Federal
5 Home Loan Mortgage Corporation, Federal Housing Administration, or
6 Government National Mortgage Association suspends or terminates the
7 licensee's status as an approved seller or seller and servicer;

8 ~~(d)~~ (f) The filing of a criminal indictment or
9 information against the licensee or any of its officers, directors,
10 shareholders, partners, members, employees, or agents; or

11 ~~(e)~~ (g) The licensee or any of the licensee's officers,
12 directors, shareholders, partners, members, employees, or agents was
13 convicted of, pleaded guilty to, or was found guilty after a plea of
14 nolo contendere to (i) a misdemeanor under state or federal law which
15 involves dishonesty or fraud or which involves any aspect of the
16 mortgage banking business, depository institution business, or
17 installment loan company business or (ii) any felony under state or
18 federal law; and

19 (10) Notify the director in writing or through ~~an~~
20 ~~electronic method as prescribed by the director~~ the Nationwide
21 Mortgage Licensing System and Registry within thirty days after the
22 occurrence of a material development other than as described in
23 subdivision (9) of this section, including, but not limited to, any
24 of the following:

25 (a) Business reorganization;

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

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

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

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

12 Sec. 5. (1) A licensee licensed as a mortgage loan
13 originator shall notify the director in writing or through the
14 Nationwide Mortgage Licensing System and Registry within three
15 business days after the occurrence of any of the following:

16 (a) The filing of a voluntary petition in bankruptcy by
17 such licensee or notice of a filing of an involuntary petition in
18 bankruptcy against such licensee;

19 (b) The filing of a criminal indictment or information
20 against such licensee regarding (i) a misdemeanor under state or
21 federal law which involves dishonesty or fraud or which involves any
22 aspect of the mortgage banking business, depository institution
23 business, or installment loan company business or (ii) any felony
24 under state or federal law;

25 (c) Such licensee was convicted of, pleaded guilty to, or

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

6 (d) Any other state or jurisdiction institutes license
7 denial, cease and desist, suspension, or revocation procedures
8 against such licensee;

9 (e) The attorney general of any state, the Consumer
10 Financial Protection Bureau, or the Federal Trade Commission
11 initiates an action to enforce consumer protection laws against such
12 licensee; or

13 (f) The Federal National Mortgage Association, Federal
14 Home Loan Mortgage Corporation, Federal Housing Administration, or
15 Government National Mortgage Association suspends or terminates such
16 licensee's status as an approved loan originator.

17 (2) A licensee licensed as a mortgage loan originator
18 shall update through the Nationwide Mortgage Licensing System and
19 Registry his or her employment history on file with the department no
20 later than ten business days after the submission of the required
21 notice of the creation or termination of an employment relationship
22 pursuant to section 45-735.

23 (3) A licensee licensed as a mortgage loan originator
24 shall notify the director in writing or through the Nationwide
25 Mortgage Licensing System and Registry within thirty days after the

1 occurrence of a material development other than as described in
2 subsections (1) and (2) of this section, including, but not limited
3 to, any of the following:

4 (a) A change in such licensee's name;

5 (b) A change in such licensee's residential address;

6 (c) A change in such licensee's employment address;

7 (d) The filing of a tax or other governmental lien
8 against such licensee;

9 (e) The entry of a monetary judgment against such
10 licensee; or

11 (f) The entry of an order against such licensee,
12 including orders to which such licensee consented, by any other state
13 or federal regulator.

14 Sec. 6. Section 45-741, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 45-741 (1) The director may examine documents and records
17 maintained by a licensee, registrant, individual, or person subject
18 to the Residential Mortgage Licensing Act. The director may
19 investigate complaints about a licensee, registrant, individual, or
20 person subject to the act. The director may investigate reports of
21 alleged violations of the act, any federal law governing residential
22 mortgage loans, or any rule, regulation, or order of the director
23 under the act. For purposes of investigating violations or complaints
24 arising under the act or for the purposes of examination, the
25 director may review, investigate, or examine any licensee,

1 registrant, individual, or person subject to the act as often as
2 necessary in order to carry out the purposes of the act.

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

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

11 (b) Personal history and experience information,
12 including independent credit reports obtained from a consumer
13 reporting agency described in 15 U.S.C. 1681a(p), as such section
14 existed on January 1, 2010; and

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

19 (3) Each licensee, registrant, individual, or person
20 subject to the Residential Mortgage Licensing Act shall make
21 available to the director upon request the books, accounts, records,
22 files, or documents relating to the operations of such licensee,
23 registrant, individual, or person subject to the act. The director
24 shall have access to such books, accounts, records, files, and
25 documents and may interview the officers, principals, mortgage loan

1 originators, employees, independent contractors, agents, and
2 customers of the licensee, registrant, individual, or person subject
3 to the act, concerning the business of the licensee, registrant,
4 individual, or person subject to the act.

5 (4) Each licensee, registrant, individual, or person
6 subject to the act shall make or compile reports or prepare other
7 information as instructed by the director in order to carry out the
8 purposes of this section, including, but not limited to:

9 (a) Accounting compilations;

10 (b) Information lists and data concerning loan
11 transactions on a form prescribed by the director; or

12 (c) Such other information deemed necessary to carry out
13 the purposes of this section.

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

24 (6) For the purpose of any investigation, examination, or
25 proceeding under the act, the director or any officer designated by

1 him or her may administer oaths and affirmations, subpoena witnesses
2 and compel their attendance, take evidence, and require the
3 production of any books, papers, correspondence, memoranda,
4 agreements, or other documents or records which the director deems
5 relevant or material to the inquiry. If any person refuses to comply
6 with a subpoena issued under this section or to testify with respect
7 to any matter relevant to the proceeding, the district court of
8 Lancaster County may, on application of the director, issue an order
9 requiring the person to comply with the subpoena and to testify.
10 Failure to obey an order of the court to comply with the subpoena may
11 be punished by the court as civil contempt.

12 (7) In conducting an examination or investigation under
13 this section, the director may rely on reports made by the licensee
14 or registrant which have been prepared within the preceding twelve
15 months for the following federal agencies or federally related
16 entities:

17 (a) The United States Department of Housing and Urban
18 Development;

19 (b) The Federal Housing Administration;

20 (c) The Federal National Mortgage Association;

21 (d) The Government National Mortgage Association;

22 (e) The Federal Home Loan Mortgage Corporation; ~~or~~

23 (f) The United States Department of Veterans Affairs;

24 or -

25 (g) The Consumer Financial Protection Bureau.

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

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

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

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

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

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

25 (10) No licensee, registrant, individual, or person

1 subject to investigation or examination under this section shall
2 knowingly withhold, abstract, remove, mutilate, destroy, or secrete
3 any books, records, computer records, or other information.

4 (11) The total charge for an examination or investigation
5 shall be paid by the licensee or registrant as set forth in sections
6 8-605 and 8-606.

7 (12) Examination reports shall not be deemed public
8 records and may be withheld from the public pursuant to section
9 84-712.05.

10 (13) Complaint files shall be deemed public records.

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

16 Sec. 7. Original sections 45-727, 45-737, and 45-741,
17 Reissue Revised Statutes of Nebraska, and sections 45-701 and 45-729,
18 Revised Statutes Cumulative Supplement, 2012, are repealed.