

Chapter 9.--BANKS AND BANKING; TRUST COMPANIES

Article 22.--MORTGAGE BUSINESS

K.S.A. 9-2201. Mortgage business; definitions.

As used in this act:

- (a) "Application" means the submission of a consumer's financial information, including the consumer's name, income and social security number to obtain a credit report, the property address, an estimate of the value of the property and the mortgage loan amount sought, for the purpose of obtaining an extension of credit.
- (b) "Bona fide office" means an applicant's or licensee's place of business with an office that:
- (1) Is located in this state;
 - (2) is not located in a personal residence;
 - (3) has regular hours of operation;
 - (4) is accessible to the public;
 - (5) is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;
 - (6) is separate from any office of another registrant; and
 - (7) is accessible to all of the licensee's books, records and documents.
- (c) "Branch office" means a place of business, other than a principal place of business, where mortgage business is conducted and which is licensed as required by this act.
- (d) "Commissioner" means the state bank commissioner or designee, who shall be the deputy commissioner of the consumer and mortgage lending division of the office of the state bank commissioner.
- (e) "Individual" means a human being.
- (f) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.
- (g) "Licensee" means a person who is licensed by the commissioner as a mortgage company.
- (h) "Loan originator" means an individual:
- (1) Who engages in mortgage business on behalf of a single mortgage company;
 - (2) whose conduct of mortgage business is the responsibility of the licensee;
 - (3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and
 - (4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.
- (i) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.
- (1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of an application:
 - (A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 - (B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a 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.

- (2) An individual engaging solely in loan processor or underwriter activities shall 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 loan originator.

(j) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, arranging for others, or holding the rights to or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.

(k) "Mortgage company" means a person engaged in mortgage business from a principal place of business or branch office, which has been licensed as required by this act.

(l) "Mortgage loan" means a loan or agreement to extend credit made to one or more individuals which is secured by a first or subordinate mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, except as provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

(m) "Mortgage servicer" means any person engaged in mortgage servicing.

(n) "Mortgage servicing" means collecting payment, remitting payment for another or the right to collect or remit payment of any of the following: Principal; interest; tax; insurance; or other payment under a mortgage loan.

(o) "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.

(p) "Not-for-profit" means a business entity that is granted tax exempt status by the internal revenue service.

(q) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

(r) "Primary market" means the market wherein mortgage business is conducted including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction.

(s) "Principal place of business" means a licensed place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.

(t) "Promotional items" means pens, pencils, hats and other such novelty items.

(u) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

(v) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

History: L. 1996, ch. 175, § 1; L. 1999, ch. 45, § 1; L. 2001, ch. 88, § 2; L. 2001, ch. 166, § 1; L. 2009, ch. 29, § 4; L. 2015, ch. 33, § 7; L. 2016, ch. 15, § 1; July 1

K.S.A. 9-2202. Exempt from licensure.

The following are exempt from the licensing requirements of this act:

(a) Any bank, savings bank, trust company, savings and loan association, building and loan association, industrial loan company or credit union organized, chartered or authorized under the laws of the United States or of any state which is authorized to make loans and to receive deposits;

(b) any entity directly or indirectly regulated by an agency of the United States or of any state which is a subsidiary of any entity listed in subsection (a) if 25% or more of such entity's common stock is directly owned by any entity listed in subsection (a);

(c) the United States of America, the state of Kansas, any other state, or any agency or instrumentality of any governmental entity;

(d) any individual who with their own funds for their own investment makes a purchase money mortgage or finances the sale of their own property, except that any individual who enters into more than five such investments or sales in any twelve-month period shall be subject to all provisions of this act; and

(e) not-for-profit entities that provide mortgage loans in conjunction with a mission of building or rehabilitating affordable homes to low-income consumers.

History: L. 1996, ch. 175, § 2; L. 1999, ch. 45, § 2; L. 2001, ch. 88, § 3; L. 2009, ch. 29, § 5; L. 2016, ch. 15, § 2; July 1.

K.S.A. 9-2203. License required to conduct mortgage business; registration required for a loan originator; penalty; statute of limitations for prosecution.

(a) Mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. A licensee shall be responsible for all mortgage business conducted on their behalf by loan originators or other employees.

(b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as required by this act and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry, if operational at the time of registration.

(c) Loan origination shall only be conducted at or from a mortgage company and a registrant shall only engage in mortgage business on behalf of one mortgage company.

(d) Nothing under this act shall require a licensee to obtain any other license for the sole purpose of conducting non-depository mortgage business.

(e) Any person who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

(f) No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(g) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute

History: L. 1996, ch. 175, § 3; L. 1999, ch. 45, § 3; L. 2001, ch. 88, § 4; L. 2005, ch. 144, § 1; L. 2009, ch. 29, § 6; L. 2016, ch. 15, § 3; July 1.

K.S.A. 9-2204. Application for license for mortgage company; application for registration for loan originator; content.

(a) Any person required to be licensed as a mortgage company pursuant to this act shall submit to the commissioner a separate application for the principal place of business and each branch office on forms prescribed and provided by the commissioner. The application or applications shall contain information the commissioner deems necessary to adequately identify:

- (1) The nature of the mortgage business to be conducted, principal place of business address and each branch office address;
- (2) the identity, character and qualifications of an individual applicant;
- (3) the identity, character and qualifications of the loan originators, owners, officers, directors, members, partners and employees of the applicant;
- (4) the name under which the applicant intends to conduct business; and
- (5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant and compliance with the provisions of this act.

(b) Any individual required to register as a loan originator pursuant to this act shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify the location where the individual engages in mortgage business activities, the licensee for whom the registrant will conduct mortgage business and other information the commissioner requires to evaluate the condition, character, qualifications, and fitness of the applicant and compliance with the provisions of this act.

(c) Each application shall be accompanied by a nonrefundable fee of not less than \$50, which may be increased by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

(d) An application shall be approved, and a nonassignable license or registration shall be issued to the applicant provided:

- (1) The commissioner has received the complete application and fee required by this section;
- (2) the commissioner determines the proposed name under which an applicant for a mortgage company license intends to conduct business is not misleading or otherwise deceptive; and
- (3) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

History: L. 1996, ch. 175, § 4; L. 1999, ch. 45, § 4; L. 2000, ch. 17, § 1; L. 2001, ch. 88, § 5; Nov. 1.

K.S.A. 9-2205. License or registration; renewal.

(a) A license or registration shall become effective as of the date specified in writing by the commissioner.

(b) A license shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the license, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original license application or prior renewal applications.

(c) A registration shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the registration, a renewal application, containing information the commissioner requires to determine the existence of material changes

from the information contained in the applicant's original registration application or prior renewal applications, including the completion of any continuing education requirements.

(d) Each renewal application shall be accompanied by a nonrefundable fee which shall be established by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

(e) Any renewal application received by the commissioner after the expiration date of the current license or registration shall be treated as an original application and shall be subject to all reporting and fee requirements contained in K.S.A. 9-2204, and amendments thereto.

History: L. 1996, ch. 175, § 5; L. 1999, ch. 45, § 5; L. 2001, ch. 88, § 6; L. 2005, ch. 144, § 2; L. 2009, ch. 29, § 7; L. 2016, ch. 15, § 4; July 1.

K.S.A. 9-2206. Application denied; appeal.

If the commissioner fails to issue a license or registration within 60 days or grant a renewal within 30 days after an application is deemed complete by the commissioner, the applicant may make written request for hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

History: L. 1996, ch. 175, § 6; L. 1999, ch. 45, § 6; L. 2001, ch. 88, § 7; L. 2016, ch. 15, § 5; July 1.

K.S.A. 9-2207. Denial, suspension or revocation of license or registration; notice.

(a) The commissioner may deny, suspend, revoke, or refuse to renew a license or registration issued pursuant to this act, if the commissioner finds, after notice and opportunity for a hearing conducted in accordance with the provisions of the administrative procedures act, that:

- (1) The applicant, licensee or registrant has repeatedly or willfully violated any section of this act or any rule and regulation or order lawfully made pursuant to this act;
- (2) facts or conditions exist which would have justified the denial of the license, registration or renewal had these facts or conditions existed or been known to exist at the time the application for the license, Registration or renewal was made;
- (3) the applicant, licensee or registrant has filed with the commissioner any document or statement containing any false representation of a material fact or fails to state a material fact;
- (4) the applicant, licensee or registrant has been convicted of any crime involving fraud, dishonesty or deceit, except that no registration shall be granted to any loan originator who:
 - (A) Has had a mortgage loan originator license or registration revoked in any governmental jurisdiction; or
 - (B) has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:
 - (i) During the seven-year period preceding the date of the application for licensing and registration; or
 - (ii) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, deceit, a breach of trust or money laundering;
- (5) the applicant, licensee or registrant has engaged in or is engaging in deceptive business practices;
- (6) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant, has been the subject of any disciplinary action by this agency or

- any other state or federal regulatory agency;
- (7) a final judgment has been entered against the applicant, licensee or registrant in a civil action and the commissioner finds, based upon the conduct on which the judgment is based, that licensing or registration of such person would be contrary to the public interest;
 - (8) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant has been convicted of engaging in mortgage business activity without authorization pursuant to K.S.A. 9-2203, and amendments thereto or a substantially similar offense in another state; or
 - (9) the applicant, licensee or registrant has refused to furnish information required by the commissioner within a reasonable period of time as established by the commissioner.

(b) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license or registration to render a decision suspending, revoking or refusing to renew such license or registration or to establish and make a record of the facts of any violation of law for any lawful purpose:

- (1) The imposition of an administrative penalty;
- (2) the lapse or suspension of any license or registration issued under this act by operation of law;
- (3) the licensee's or registrant's failure to renew any license or registration issued under this act; or
- (4) the licensee's or registrant's voluntary surrender of any license or registration issued under this act.

History: L. 1996, ch. 175, § 7; L. 1999, ch. 45, § 7; L. 2000, ch. 17, § 2; L. 2001, ch. 88, § 8; L. 2009, ch. 29, § 8; July 1.

K.S.A. 9-2208. License; display; signed acknowledgment; contents; advertising or solicitation disclosure.

(a) Each licensee shall make available the evidence of licensure of each licensed location in a way that reasonably assures recognition by consumers and members of the general public.

(b) Prior to entering into any contract for the provision of services or prior to the licensee receiving any compensation or promise of compensation for a mortgage loan the licensee shall acquire from the consumer a signed acknowledgment containing such information as the commissioner may prescribe by rule and regulation. The signed acknowledgment shall be retained by the licensee and a copy shall be provided to the consumer.

(c) All solicitations and published advertisements concerning mortgage business directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number or unique identifier of the licensee on record with the commissioner. Each licensee shall maintain a record of all solicitations or advertisements for a period of 36 months. For the purpose of this subsection, "advertising" does not include business cards or promotional items.

(d) No solicitation or advertisement shall contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas.

(e) No licensee or registrant shall conduct mortgage business in this state using any name other than the name or names stated on their license or registration.

History: L. 1996, ch. 175, § 8; L. 1999, ch. 45, § 8; L. 2000, ch. 17, § 3; L. 2001, ch. 88, § 9; L. 2005, ch. 144, § 3; L. 2016, ch. 15, § 6; July 1.

K.S.A. 9-2209. Commissioner, powers and duties.

- (a) The commissioner may exercise the following powers:
- (1) Adopt rules and regulations as necessary to carry out the intent and purpose of this act and to implement the requirements of applicable federal law;
 - (2) make investigations and examinations of the licensee's or registrant's operations, books and records as the commissioner deems necessary for the protection of the public and control access to any documents and records of the licensee or registrant under examination or investigation;
 - (3) charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant, licensee or registrant. The commissioner shall establish such fees in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. Charges for administration of this act shall be based on the licensee's loan volume;
 - (4) order any licensee or registrant to cease any activity or practice which the commissioner deems to be deceptive, dishonest, violative of state or federal law or unduly harmful to the interests of the public;
 - (5) exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the licensee or registrant or administers statutes, rules and regulations or programs related to mortgage business and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies which are deemed necessary or beneficial to the administration of this act;
 - (6) disclose to any person or entity that an applicant's, licensee's or registrant's application, license or registration has been denied, suspended, revoked or refused renewal;
 - (7) require or permit any person to file a written statement, under oath or otherwise as the commissioner may direct, setting forth all the facts and circumstances concerning any apparent violation of this act, or any rule and regulation promulgated thereunder or any order issued pursuant to this act;
 - (8) receive, as a condition in settlement of any investigation or examination, a payment designated for consumer education to be expended for such purpose as directed by the commissioner;
 - (9) require that any applicant, registrant, licensee or other person successfully passes a standardized examination designed to establish such person's knowledge of mortgage business transactions and all applicable state and federal law. Such examinations shall be created and administered by the commissioner or the commissioner's designee, and may be made a condition of application approval or application renewal;
 - (10) require that any applicant, licensee, registrant or other person complete a minimum number of prelicensing education hours and complete continuing education hours on an annual basis. Prelicensing and continuing education courses shall be approved by the commissioner, or the commissioner's designee, and may be made a condition of application approval and renewal;
 - (11) require fingerprinting of any applicant, registrant, licensee, members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent acting on their behalf, or other person as deemed appropriate by the commissioner. The commissioner or the commissioner's designee, may submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. 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 with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;

- (12) refer such evidence as may be available concerning any violation of this act or of any rule and regulation or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a referral, institute the appropriate criminal proceedings under this act. Upon receipt of such referral, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the commissioner, such employee shall be appointed [as] a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney;
- (13) issue and apply to enforce subpoenas in this state at the request of a comparable official of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Kansas mortgage business act if the activities had occurred in this state;
- (14) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding loan originator or mortgage company licensing to and from any source so directed by the commissioner;
- (15) establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, registrants or other persons subject to this act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The commissioner shall regularly report violations of law, as well as enforcement actions and other relevant information to the nationwide mortgage licensing system and registry;
- (16) require any licensee or registrant to file reports with the nationwide mortgage licensing system and registry in the form prescribed by the commissioner or the commissioner's designee;
- (17) receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of the Kansas mortgage business act or commence proceedings on the commissioner's own initiative;
- (18) provide guidance to persons and groups on their rights and duties under the Kansas mortgage business act;
- (19) enter into any informal agreement with any mortgage company for a plan of action to address violations of law. The adoption of an informal agreement authorized by this paragraph shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this paragraph shall not be considered an order or other agency action, and shall be considered confidential examination material pursuant to K.S.A. 9-2217, and amendments thereto. All such examination material shall also be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-

215 et seq., and amendments thereto, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. The provisions of this paragraph shall expire on July 1, 2021, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021; and

(20) issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the Kansas administrative procedure act.

(b) For the purpose of any examination, investigation or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.

(c) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(e) Except for refund of an excess charge, no liability is imposed under the Kansas mortgage business act for an act done or omitted in conformity with a rule and regulation or written administrative interpretation of the commissioner in effect at the time of the act or omission, notwithstanding that after the act or omission, the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.

History: L. 1996, ch. 175, § 9; L. 1999, ch. 45, § 9; L. 2000, ch. 17, § 4; L. 2001, ch. 88, § 10; L. 2005, ch. 144, § 4; L. 2009, ch. 29, § 9; L. 2016, ch. 15, § 7; July 1.

K.S.A. 9-2210. Fees; disposition.

All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308 and amendments thereto.

History: L. 1996, ch. 175, § 10; Apr. 25.

K.S.A. 9-2211. Bonding requirements; minimum net worth requirements.

(a) Each applicant or licensee who maintains a bona fide office shall file with the commissioner a surety bond in the amount of not less than \$50,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in

this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the following requirements:

- (1) The bond shall be payable to the office of the state bank commissioner and shall be in an amount established by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto;
 - (2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner, provided that such termination shall not affect the surety's liability for violations of the Kansas mortgage business act occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of principal that gives rise to a claim under the bond; and
 - (3) the bond shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages which are determined by the commissioner to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the requirements of this act.
- (b) Each applicant or licensee who does not maintain a bona fide office shall comply with both of the following:

- (1) File with the commissioner a surety bond in the amount of not less than \$100,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the requirements set forth in paragraphs [subsections] (a)(1), (a)(2) and (a)(3) of this act [section]; and
- (2) submit evidence that establishes, to the commissioner's satisfaction, that the applicant or licensee shall at all times maintain a minimum net worth of \$50,000. Evidence of net worth shall include the submission of a balance sheet of the applicant or a consolidated financial statement of the entity that owns or controls the applicant accompanied by a written statement by an independent certified public accountant attesting that the balance sheet or the consolidated financial statement has been reviewed in accordance with generally accepted accounting principles.

History: L. 1999, ch. 45, § 10; L. 2001, ch. 88, § 11; L. 2005, ch. 144, § 5; L. 2009, ch. 29, § 10; L. 2016, ch. 15, § 8; July 1.

K.S.A. 9-2212. Prohibited acts for persons licensed or registered under act.

No person required to be licensed or registered under this act shall directly or indirectly:

- (a) Pay compensation to, contract with or employ in any manner, any person engaged in mortgage business who is not properly licensed or registered, unless such person meets the requirements of K.S.A. 9-2202, and amendments thereto;
- (b) without the prior written approval of the commissioner employ any person who has:
 - (1) Had a license or registration denied, revoked, suspended or refused renewal; or
 - (2) been convicted of any crime involving fraud, dishonesty or deceit;
- (c) delay closing of a mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;
- (d) misrepresent the material facts or make false promises intended to influence, persuade or induce an applicant for a mortgage loan or mortgagee to take a mortgage loan or cause or contribute to misrepresentation by any person acting on behalf of the person required to be licensed or registered;
- (e) misrepresent to or conceal from an applicant for a mortgage loan a mortgagor or a

lender, material facts, terms or conditions of a transaction to which the person required to be licensed or registered is a party;

(f) engage in any transaction, practice or business conduct that is not in good faith, or that operates a fraud upon any person in connection with conducting mortgage business;

(g) receive compensation for rendering mortgage business services where the licensee or registrant has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage transaction unless the person required to be licensed or registered has provided written disclosure to the person from whom compensation is collected that the person is receiving compensation both for mortgage business services and for real estate broker or agent services;

(h) engage in any fraudulent residential mortgage brokerage or underwriting practices;

(i) advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner, any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for a mortgage loan;

(j) record a mortgage if moneys are not available for the immediate disbursement to the mortgagor unless, before that recording, the person required to be licensed or registered informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay;

(k) transfer, assign or attempt to transfer or assign, a license or registration to any other person, or assist or aid and abet any person who does not hold a valid license or registration under this act in engaging in the conduct of mortgage business;

(l) solicit or enter into a contract with a borrower that provides in substance that the person required to be licensed or registered may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(m) solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

(n) make any payment, threat or promise, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat or promise, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property or engage in any activity that would constitute a violation of K.S.A. 58-2344, and amendments thereto; or

(o) fail to comply with this act or rules and regulations promulgated under this act or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this act.

History: L. 1999, ch. 45, § 11; L. 2000, ch. 17, § 5; L. 2001, ch. 88, § 12; L. 2009, ch. 29, § 11; L. 2016, ch. 15, § 9; July 1.

K.S.A. 9-2213. Time limit for deposit of escrow funds; records required.

(a) Within three business days of receipt a licensee shall deposit all fees and money received from a borrower prior to the time a loan is consummated in an escrow account in a bank, savings bank, savings and loan association or credit union incorporated under the laws of this state, or organized under the laws of the United States or another state.

(b) For each borrower the licensee shall maintain a separate record of all money received for any service performed or to be performed, including any payment to a third party, setting forth:

- (1) The date the money was received;
- (2) the amount of money received;
- (3) the date the money was deposited in the escrow account; and
- (4) the date, description, and justification for each disbursement.

(c) Upon the request of a borrower, a copy of the record required by subsection (b) shall be provided to the borrower:

- (1) Within five business days of consummation of the loan; or
- (2) within five business days of receipt of written notice of the borrower's intention to withdraw from the loan transaction.

History: L. 1999, ch. 45, § 12; L. 2000, ch. 17, § 6; L. 2001, ch. 88, § 13; Nov. 1.

K.S.A. 9-2214. Ownership of documents.

All original documents provided to the licensee by the borrower or at the expense of the borrower, including any appraisals, are the property of the borrower and at the borrower's request, shall be returned to the borrower without further expense if the loan is not consummated.

History: L. 1999, ch. 45, § 13; L. 2001, ch. 88, § 14; Nov. 1.

K.S.A. 9-2215. Change in licensee's business; notice.

(a) A licensee shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:

- (1) The closing or relocation of the principal place of business or any branch office;
- (2) a change in the licensee's name or legal entity status; or
- (3) the addition or loss of any loan originator, owner, officer, partner or director.

(b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a) and charge a reasonable fee for any action required by the commissioner as a result of such notice and additional information.

History: L. 1999, ch. 45, § 14; L. 2001, ch. 88, § 15; Nov. 1.

K.S.A. 9-2216. Retention of records; time period; inspection of records; security of records; preservation of records.

(a) A licensee shall keep copies of all documents or correspondence received or prepared by the licensee or registrant in connection with a loan or loan application and those records and documents required by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto, for such time frames as are specified in the rules and regulations. If the loan is not serviced by a licensee, the retention period commences on the date the loan is closed or, if the loan is not closed, the date of the loan application. If the loan is serviced by a licensee, the retention period commences on the date the loan is paid in full or the date the licensee ceases to service the loan.

(b) All books, records and any other documents held by the licensee shall be made available for examination and inspection by the commissioner or the commissioner's designee. Certified copies of all records not kept within this state shall be delivered to the commissioner within three business days of the date such documents are requested.

(c) Each licensee shall maintain the following information:

- (1) The name, address and telephone number of each loan applicant;
- (2) the type of loan applied for and the date of the application; [and]
- (3) the disposition of each loan application, including the date of loan funding, loan denial, withdrawal and name of lender if applicable and name of loan originator and any compensation or other fees received by the loan originator.

(d) Each licensee shall establish, maintain and enforce written policies and procedures regarding security of records which are reasonably designed to prevent the misuse of a consumer's personal or financial information.

(e) Before ceasing to conduct or discontinuing business, a licensee shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this act and applicable regulations for the remainder of each period specified.

(f) Any records required to be retained may be maintained and preserved by nonerased, nonalterable electronic imaging or by photograph on film. If the records are produced or reproduced by photographic film, electronic imaging or computer storage medium the licensee shall meet the following criteria:

- (1) Arrange the records and index the films, electronic image or computer storage media to permit immediate location of any particular record;
- (2) be ready at all times to promptly provide a facsimile enlargement of film, a computer printout or a copy of the electronic images or computer storage medium that the commissioner may request; and
- (3) with respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration or destruction.

(g) No person required to be licensed or registered under this act shall:

- (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the commissioner or the commissioner's designee; or
- (2) alter, destroy, shred, mutilate or conceal a record with the intent to impair the object's integrity or availability for use in a proceeding before the commissioner or a proceeding brought by the commissioner.

History: L. 1999, ch. 45, § 15; L. 2001, ch. 88, § 16; L. 2005, ch. 144, § 6; L. 2009, ch. 29, § 12; L. 2016, ch. 15, § 10; July 1.

K.S.A. 9-2216a. Annual written report; penalty.

Each licensee shall annually, on or before April 1, file a written report with the commissioner containing the information that the commissioner may reasonably require concerning the licensee's business and operations during the preceding calendar year. The report shall be made in the form prescribed by the commissioner, which may include reports filed with the nationwide mortgage licensing system and registry. Any licensee who fails to file the report required by this section with the commissioner by April 1 shall be subject to a late penalty of \$100 for each day after April 1 the report is delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The commissioner may relieve any licensee from the payment of any penalty, in whole or in part, for good cause. The filing of the annual written report required under this section shall satisfy any other reports required of a licensee under this act.

History: L. 2001, ch. 88, § 1; L. 2009, ch. 29, § 13; L. 2016, ch. 15, § 11; July 1.

K.S.A. 9-2217. Confidentiality of examination reports; exceptions.

Examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners are confidential, except that the commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners.

History: L. 1999, ch. 45, § 16; Apr. 8.

K.S.A. 9-2218. Cease and desist orders; civil fines.

(a) If the commissioner determines after notice and opportunity for a hearing pursuant to the Kansas administrative procedure act that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner by order may require any or all of the following:

- (1) That the person cease and desist from the unlawful act or practice;
- (2) that the person pay a fine not to exceed \$10,000 per incident for the unlawful act or practice;
- (3) If any person is found to have violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the commissioner may impose an additional penalty not to exceed \$10,000 for each such violation;
- (4) censure the person if the person is registered or licensed under this act;
- (5) bar or suspend the person from applying for a license or registration under this act, or associating with a mortgage business or supervised lender licensed in this state;
- (6) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 8% per annum from the date of the violation; or
- (7) that the person take such affirmative action as in the judgment of the commissioner will carry out the purposes of this act.

(b) If the commissioner makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the commissioner may issue an emergency cease and desist order.

- (1) Such emergency order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto.
- (2) Upon the entry of such an emergency order, the commissioner shall promptly notify the person subject to the order that it has been entered, of the reasons, and that a hearing will be held upon written request by the person.
- (3) If the person requests a hearing, or in the absence of any request, if the commissioner determines that a hearing should be held, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Upon completion of the hearing the commissioner shall by written findings of fact and conclusions of law vacate, modify or make permanent the emergency order.
- (4) If no hearing is requested and none is ordered by the commissioner, the emergency order will remain in effect until it is modified or vacated by the commissioner.

History: L. 1999, ch. 45, § 17; L. 2000, ch. 17, § 7; L. 2005, ch. 144, § 7; July 1.

K.S.A. 9-2219. Injunction.

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a

permanent or temporary injunction, restraining order, restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

History: L. 1999, ch. 45, § 18; Apr. 8.

K.S.A. 9-2220. Citation of act.

(a) The provisions of K.S.A. 9-2201 through 9-2220, and amendments thereto, and K.S.A. 9-2216a, and amendments thereto, shall be known and may be cited as the Kansas mortgage business act.

(b) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

History: L. 1999, ch. 45, § 19; L. 2001, ch. 88, § 17; L. 2009, ch. 29, § 14; July 1.