

Nebraska Loan Broker Act
Chapter 45, Article 1, Section f
§§ 45-189 to 45-191.11

45-189

Loan brokers; legislative findings.

The Legislature finds that:

(1) Many professional groups are presently licensed or otherwise regulated by the State of Nebraska in the interest of public protection;

(2) Certain questionable business practices, such as the collection of an advance fee prior to the performance of the service, misleads the public;

(3) Such practices are avoided by many professional groups and many professional groups are regulated by the state to restrict practices which tend to mislead or deceive the public;

(4) Loan brokers in Nebraska have engaged in the practice of collecting an advance fee from borrowers in consideration for attempting to procure a loan of money;

(5) Such practice, as well as others, by loan brokers has led the public to believe that the loan broker has agreed to procure a loan for the borrower when in fact the loan broker has merely promised to attempt to procure a loan; and

(6) Regulation of loan brokers by the state, in similar fashion to that of other professions, is necessary in order to protect the public welfare and to promote the use of fair and equitable business practices.

Last amended:

~ Cum. Supp. 2020

45-190

Terms, defined.

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

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

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

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

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

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

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

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

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

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

(b) Loan broker does not include: (i) A bank, bank holding company, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, or credit union which is subject to regulation or supervision under the laws of the United States or any state; (ii) a mortgage banker or an installment loan company licensed or registered under the laws of the State of Nebraska; (iii) a credit card company; (iv) an insurance company authorized to conduct business under the laws of the State of Nebraska; or (v) a lender approved by the Federal Housing Administration or the United States Department of Veterans Affairs, if the loan is secured or covered by guarantees, commitments, or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs;

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

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

Last amended:

~ Cum. Supp. 2020

45-191

Loan brokers; prohibited acts.

No loan broker shall:

(1) Assess or collect an advance fee from a borrower under a contract to provide services for the procurement of a loan of money;

(2) Willfully, either orally or in writing, misrepresent the terms, benefits, privileges, or provisions of any service contract issued or to be issued by the loan broker or by any lender; or

(3) Represent or imply that the loan broker has been sponsored, recommended, or approved by the department or that the loan broker's abilities or qualifications have been passed upon by the department.

Last amended:

~ Reissue 2010

45-191.01

Loan brokerage agreement; written disclosure statement; requirements.

(1) Prior to a borrower signing a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and

(j) Any other information the director requires.

Last amended:

~ Cum. Supp. 2020

45-191.02

Loan brokers; filings with department required; filing fees.

(1) Before advertising or making any oral or written representation or acting as a loan broker in this state a loan broker shall file with the department one copy of the disclosure statement and one copy of any loan brokerage agreement.

(2) The loan broker shall renew these filings no less than annually and shall also file any amendment to the disclosure statement within forty-five days after any material change in information required to be disclosed in the disclosure statement.

(3) The loan broker shall pay a one-hundred-fifty-dollar filing fee upon filing the initial disclosure statement and a one-hundred-dollar filing fee upon the filing of a renewal of the disclosure statement. The loan broker shall pay a fifty-dollar filing fee for each amendment filed. All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The information contained or filed under this section may be made available to the public under such rules and regulations as the department may prescribe.

Last amended:

~ Cum. Supp. 2020

45-191.03

Prohibited acts; violations; penalties.

(1) A loan broker who fails to make accurate and timely filings as required by section 45-191.02 shall be guilty of a Class I misdemeanor.

(2) A loan broker who willfully violates subdivision (1) of section 45-191 shall be guilty of:

(a) A Class IV felony if the advance fee assessed or collected is greater than three hundred dollars; or

(b) A Class I misdemeanor if the advance fee assessed or collected is three hundred dollars or less.

(3) A willful violation of any other provision of sections 45-189 to 45-191.11 by a loan broker shall be a Class IV felony.

Last amended:

~ Reissue 2010

45-191.04

Loan brokerage agreement; requirements; right to cancel.

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

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

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

(a) The terms and conditions of payment;

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

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

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

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

"You have five business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The five business days shall expire on (last date to mail or deliver notice), and notice of cancellation should be mailed to (loan broker's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement."

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

Last amended:
~ Cum. Supp. 2020

45-191.05
Waiver of sections; attempt; prohibited.

A waiver of sections 45-189 to 45-191.11 by a borrower prior to or at the time of entering into a loan brokerage agreement is contrary to public policy and shall be void. Any attempt by a loan broker to have a borrower waive any rights pursuant to sections 45-189 to 45-191.11 shall be a violation of such sections.

Last amended:
~ Reissue 2010

45-191.06
Department; adopt rules and regulations.

The department may adopt, promulgate, amend, and rescind such rules and regulations as necessary or appropriate to implement the purposes of sections 45-189 to 45-191.11.

Last amended:
~ Reissue 2010

45-191.07
Violation of loan brokerage agreement by loan broker; effect.

(1) If a loan broker materially violates the loan brokerage agreement, the borrower may upon written notice void such loan brokerage agreement. In addition, the borrower may recover all money paid to the loan broker and any other damages, including reasonable attorney's fees. The loan broker shall be deemed to have materially violated the loan brokerage agreement if the loan broker does any of the following:

(a) Makes false or misleading statements relating to the loan brokerage agreement;

(b) Does not comply with the loan brokerage agreement or any obligations arising from the loan brokerage agreement;

(c) Does not grant the borrower a loan or diligently attempt to obtain a loan for the borrower;
or

(d) Does not comply with the requirements of sections 45-189 to 45-191.11.

(2) Remedies under this section shall be in addition to any other remedies available in law or equity.

Last amended:

~ Reissue 2010

45-191.08

Director; enforcement powers.

(1)(a) The director in his or her discretion may make such investigations within or without this state as necessary to determine whether any person has violated or is about to violate sections 45-189 to 45-191.11 or to aid in the enforcement of such sections or in the adopting or promulgating of rules, regulations, and forms under such sections. In the discretion of the director, the actual expense of any such investigation may be charged to any person who is the subject of such investigation.

(b) The department may publish information concerning any violation of such sections or any rule, regulation, or order of the department.

(c) For purposes of any investigation or proceeding under such sections, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, 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.

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

(b) The request for order of compliance may be addressed to either (i) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce, if the person is within this state, or (ii) the appropriate district court of this state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

Last amended:

~ Reissue 2010

45-191.09

Director; summary cease and desist order; when; other enforcement measures; collection of fines and costs; hearing; procedure; appeal.

(1) The director may summarily order a loan broker to cease and desist from acting as a loan broker or from the use of certain forms or practices relating to the loan broker's activities if the order is in the public interest and the director finds:

(a) The disclosure statement on file is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) The loan broker has willfully violated or willfully failed to comply with any provision of sections 45-189 to 45-191.11;

(c) There has been a substantial failure to comply with any of the provisions of such sections;

(d) The continued use of certain forms or practices relating to the loan broker's activity would constitute a misrepresentation, deceit, or fraud upon the consumer; or

(e) Any person identified in the required disclosure statement has been convicted of an offense described in subdivision (2)(i)(i) of section 45-191.01 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(i)(ii) or (2)(i)(iii) of section 45-191.01 and the involvement of such person in the loan broker's business creates an unreasonable risk to prospective borrowers.

(2) If the director believes, whether or not based upon an investigation conducted under section 45-191.08, that any person or loan broker has engaged in or is about to engage in any act or practice constituting a violation of any provision of sections 45-189 to 45-191.11 or any rule, regulation, or order under such sections, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with such sections or any order under such sections.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4)(a) Any fines and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state. The department shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs may be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the department. Failure of the person to pay a fine and costs shall constitute a separate violation of sections 45-189 to 45-191.11.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon receipt of a written request, the matter shall be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days from the issuance of the order and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Last amended:

~ Cum. Supp. 2020

45-191.10

Persons exempt.

The following persons are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, certified public accountant, or investment adviser.

Last amended:
~ Cum. Supp. 2020

45-191.11
Burden of proof.

In any proceeding under the provisions of sections 45-189 to 45-191.11, the burden of proving an exemption or an exception from a definition shall be upon the person claiming it.

Last amended:
~ Reissue 2010
