

FREQUENTLY ASKED INSTALLMENT LOAN QUESTIONS

Q: Neb. Stat. Rev. § 45-1024(6)(a)(ii) (Cum. Supp. 2008) requires an appraisal on certain real estate secured loans:

For the purpose of assuring that the sum of the principal amount of the loan applied for and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property;

- a) Does the Department require licensees to purchase every appraisal they use or may a licensee use an appraisal obtained from another source?
- b) May a licensee rely on an appraisal furnished by an applicant?
- c) May a licensee rely on an appraisal purchased by another lender?
- d) May a licensee rely on an appraisal purchased by the licensee in connection with a previous loan application?

A: Neb. Rev. Stat. §45-1024(6)(a)(ii) (Cum. Supp. 2008) states the sum of the principal amount of the loan and the balances of all other liens against the property can not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the Department pursuant to rule, regulation, or order.

A licensee need not rely solely on an appraisal obtained by the licensee purchased in connection with the subject loan. The licensee may use appraisals obtained from other sources. Specifically, a licensee may rely on an appraisal supplied by the applicant, purchased by another lender, or purchased by the licensee in connection with a previous application so long as the appraisal is completed by a Nebraska licensed appraiser, is for the same property that is being encumbered by the loan, is less than a year old, and there have been no substantial changes in the market conditions in which the prior appraisal was purchased.

A Nebraska licensed appraiser is defined by Neb. Rev. Stat. §76-2213(Cum. Supp. 2008) as a person who holds a valid credential as a licensed real property appraiser issued under the Real Property Appraiser Act.

Q: Is there an age limit after which an appraisal is deemed to be too old to still be reliable?

A: According to Department Statement of Policy #16, an appraisal for a bank is valid for one year. The annual time frame could be shortened if the market conditions in

which the appraisal was completed have substantially changed. The Department believes this standard is also appropriate for installment loan licensees. Therefore, the only age limit the Department requires for reliability is that the appraisal be less than one year old.

- Q:** Has an Automated Valuation Model (“AVM”) been approved as an alternative to a licensed appraiser produced appraisal?
- A:** The Department has approved two AVMs. A business wishing to use an alternative AVM may submit a completed Installment Loan Real Estate Valuation Model Application to the Department for review and possible approval. The Application is available to download at <http://www.ndbf.org/forms/insloaneval.pdf>.
- Q:** Does Neb. Rev. Stat. § 45-1024(2)(e) apply to pre-computed contracts, simple interest contracts, or both?
- A:** Neb. Rev. Stat. § 45-1024(2) provides that, “This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise.” The section applies to both pre-computed contracts and simple interest contracts.
- Q:** Is there a formula that may be used to calculate the deferment fee under a pre-computed contract and a simple interest contract? As an alternative to using a formula, may a creditor assess a reasonable flat fee for processing a due date change or extension?
- A:** It does not appear that a flat fee is allowed under current statutory language. Neb. Rev. Stat. § 45-1024(2)(e), provides that, “the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period.” The statutory language should be followed in any computation performed.
- Q:** May a late fee and a deferment fee be charged in connection with the same transaction?
- A:** A licensee may not charge both a late fee and a deferment fee in connection with the same transaction. Neb. Rev. Stat. § 45-1024(2)(e) provides in part that, “No installment in which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge.” If a late fee had been charged and that transaction was later deferred, a deferment fee could not be charged unless the late fee was refunded back to the borrower.

FREQUENTLY ASKED REVOLVING CHARGE AGREEMENT QUESTIONS

- Q:** Neb. Stat. Rev. § 45-205 (Reissue 2004) addresses the “Same As Cash” (SAC) notification period. The statute states that the SAC notification period for special order goods which were not available for immediate delivery expires thirty-five days after the goods are delivered. Is this the only circumstance where the SAC notification period expires thirty-five days after the buyer receives the goods?
- A:** Section 45-205 provides every revolving charge agreement shall be in writing and shall be signed by the buyer. Section 45-205 further states that:

If a seller proffers a revolving charges agreement as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the revolving charge agreement, if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, whether within the revolving charge agreement or in a separate document or, in lieu thereof, within a statement sent by the seller to the buyer no later than thirty-five days after the buyer’s purchase of goods, services, or in the case of special order goods which are not available for immediate delivery no later than thirty-five days after the buyer’s receipt of goods, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential.

Section 45-205 declares that such requirements may be met by disclosing the terms of the agreement.

Special order goods would not be the only circumstance under which the thirty-five day notification would start to run at delivery. This would include times when complete delivery of the goods has been delayed. Also, delivery can run as of the date of purchase if the items are in stock and the purchaser receives the goods at the time of purchase.

- Q:** The timing of the SAC notification is fact specific. Listed below are several SAC scenarios:
- a) When does the SAC notification period expire when the goods were not special order but are not available for delivery for two months?
 - b) When does the SAC notification period expire when only part of the goods were special order and not available for immediate delivery?

c) Does the SAC notification period expire thirty-five days after the buyer signs the sales slip when the goods were available for immediate delivery but were not delivered within thirty-five days, not due to buyer's actions?

A: The hypothetical situations where the goods are not special order but not available for delivery for two months; where part of the goods are special order and not available for immediate delivery; and where the goods are available for immediate delivery but not delivered within 35 days not due to buyer's actions, would all fall under the umbrella of thirty-five days after a complete delivery. Complete delivery means that all items have been delivered.

Q: When does delivery take place in the following situations?

- a) The Seller encounters an unexpected installation problem that was not resolved until more than 35 days after the sales slip was signed.
- b) The purchased items are timely delivered but are delivered damaged or are inadequately installed.
- c) The purchased items are delivered and installation is not required.
- d) The purchased items are delivered and then subsequently damaged.

A:

- a) Assuming that the installation is part of the delivery of the goods, the 35 days would not begin to run until installation is completed.
- b) In this instance, delivery would take place 35 days after the delivery of the goods, unless proper installation is required as part of delivery. If the goods are damaged, delivery would not take place until undamaged goods are delivered unless the buyer approves the damaged goods as acceptable.
- c) In this instance, the delivery takes place upon the delivery of the goods only.
- d) Generally, the 35 days would begin to run as of the date of delivery. Unless the seller is in some way responsible for the damaging of the goods, subsequent damage to the goods would not toll the running of the 35 days.