Interest Rates and Loans
Chapter 45, Article 1
§§ 45-101.02 to 45-113
§§ 45-189 to 45-191.11
§§ 45-1,1104 to 45-1,1115

45-101.02
Terms, defined.

As used in sections 45-101.02 to 45-101.04, 45-102, and 45-105, unless the context otherwise requires:

(1) Interest means the compensation agreed upon or allowed by law upon any loan or forbearance of money, goods, or things in action but does not include loan service costs;

(2) Loan service costs means reasonable and necessary costs and charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including but not limited to (a) prepayment charges, (b) delinquency charges, (c) premiums for hazard, private mortgage, disability, life, or title insurance, (d) fees for escrow, appraisal, abstracting, title examination, surveys, inspections, credit reports, and recording of documents, (e) origination fees, (f) interest on interest after default, and (g) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds; and

(3) Discount points means any charges except actual loan service costs whether or not actually denominated as discount points paid to a lender which directly or indirectly affect the ability of the borrower to secure a loan. For the purpose of determining the rate of interest on any loan, discount points, if any, shall be amortized over the original term of the loan.

Last amended:
Laws 1997, LB 137, § 19
~ Reissue 2010

45-101.03
General interest rate; maximum; variable rate authorized; conditions.

(1) Except as provided in section 45-101.04, any rate of interest which may be agreed upon, not exceeding sixteen percent per annum on the unpaid principal balance, shall be valid upon any loan or forbearance of money, goods, or things in action and may be taken yearly, for any shorter period, or in advance, if so expressly agreed.

(2) Such rate of interest so long as it does not violate sections 45-101.02 to 45-113 or any federal usury law may be charged on a variable rate basis, except that if the lender proposes to increase the interest rate during the term of a loan on consumer goods notice of such proposed increase shall be communicated in writing to the person or persons primarily obligated on such

loan at least ten days prior to the proposed increase. Deposit of such notice in the United States mails, postage prepaid, shall be deemed communication for the purpose of this section.

Last amended:
Laws 1982, LB 778, § 1
~ Reissue 2010

45-101.04
General interest rate; maximum; when not applicable.

The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, the Nebraska Installment Loan Act, subsection (4) of section 8-319, or sections 8-815 to 8-829;

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (15) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or secured by real property when such loans are made (a) by a licensee, registrant, or permittee operating under a license,

registration, or permit duly issued by the Department of Banking and Finance except for licensees operating under the Nebraska Installment Loan Act, (b) by any financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(11) Loans secured solely by real property when such loans are (a) made by licensees operating under the Nebraska Installment Loan Act and (b) made to finance or refinance the purchase of the property or construction on or improvements to the property, if the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and 45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan;

(12) Loans secured by a reverse mortgage pursuant to section 45-702.01;

(13) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; or

(14) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Last amended:
Laws 2010, LB 892, § 2
~ Reissue 2010

45-101.05
Mortgage loan; escrow account; how established and maintained.

No lender, in connection with a mortgage loan, shall require the borrower or prospective borrower:

(1) To deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, prior to or upon the date of settlement, an aggregate sum in excess of the total amount of such taxes, insurance premiums, and other charges which are attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender if the selection of each such date constitutes prudent lending practice and ending on the due date of its first full installment payment under the mortgage plus a cushion that shall be no greater than one-sixth of the estimated total annual payments to be made from the escrow account for such taxes, insurance premiums, and other charges during the twelve-month period beginning on the date of settlement; or

(2) To deposit in any such escrow account in any month beginning after the date of settlement a sum for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property in excess of one-twelfth of the total annual escrow account payments which the lender reasonably anticipates paying from the escrow account for such taxes, insurance premiums, and other charges plus a cushion that shall be no greater than one-sixth of the estimated total annual payments to be made from the escrow account for such taxes, insurance premiums, and other charges, except that if the lender determines that a shortage exists or that there will be a deficiency on the due date the lender shall not be prohibited from requiring additional monthly deposits in such escrow account of pro rata portions of the shortage or deficiency corresponding to the number of months from the date of the lender's determination of such shortage or deficiency to the date upon which such taxes, insurance premiums, and other charges would be paid under the normal lending practice of the lender if the selection of each such date constitutes prudent lending practice.

Last amended:
Laws 1997, LB 554, § 1
~ Reissue 2010

45-101.06
Escrow accounts; not required.

It is not the intent of sections 45-101.05 to 45-101.07 to require that escrow accounts be required or established.

Last amended:
Laws 1976, LB 502, § 2
~ Reissue 2010

45-101.07
Violations; penalty.

Any lender who violates any of the provisions of section 45-101.05 shall be guilty of a Class IV misdemeanor.

Last amended:
Laws 1977, LB 41, § 39
~ Reissue 2010

45-102
Interest; legal rate; exception.

Interest upon the loan or forbearance of money, goods or things in action shall be at the rate of twelve percent per annum for the period commencing on March 19, 1980, through August 31, 1983, and at the rate of six percent per annum commencing on September 1, 1983, on the unpaid principal balance, unless a greater rate, not exceeding the rate of interest provided in section 45-101.03, be contracted for by the parties.

Last amended:
Laws 1980, LB 279, § 5
~ Reissue 2010

45-103
Interest; judgments; decrees; rate; exceptions.

For decrees and judgments rendered before July 20, 2002, interest on decrees and judgments for the payment of money shall be fixed at a rate equal to one percentage point above the bond equivalent yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the last auction of fifty-two-week United States Treasury bills in effect on the date of entry of the judgment. For decrees and judgments rendered on and after July 20, 2002, interest on decrees and judgments for the payment of money shall be fixed at a rate equal to two percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of entry of the judgment. The State Court Administrator shall distribute notice of such rate and any changes to it to all Nebraska judges to be in effect two weeks after the date the auction price is published by the Secretary of the Treasury of the United States. This interest rate shall not apply to:

(1) An action in which the interest rate is specifically provided by law; or

(2) An action founded upon an oral or written contract in which the parties have agreed to a rate of interest other than that specified in this section.

Last amended:
Laws 2002, LB 876, § 78
~ Reissue 2010

45-103.01
Postjudgment interest; accrual; when.

Interest as provided in section 45-103 shall accrue on decrees and judgments for the payment of money from the date of entry of judgment until satisfaction of judgment.

Last amended:
Laws 1999, LB 43, § 20
~ Reissue 2010

45-103.02
Prejudgment interest; accrual; when; conditions.

(1) Except as provided in section 45-103.04, interest as provided in section 45-103 shall accrue on the unpaid balance of unliquidated claims from the date of the plaintiff's first offer of settlement

which is exceeded by the judgment until the entry of judgment if all of the following conditions are met:

(a) The offer is made in writing upon the defendant by certified mail, return receipt requested, to allow judgment to be taken in accordance with the terms and conditions stated in the offer;

(b) The offer is made not less than ten days prior to the commencement of the trial;

(c) A copy of the offer and proof of delivery to the defendant in the form of a receipt signed by the party or his or her attorney is filed with the clerk of the court in which the action is pending; and

(d) The offer is not accepted prior to trial or within thirty days of the date of the offer, whichever occurs first.

(2) Except as provided in section 45-103.04, interest as provided in section 45-104 shall accrue on the unpaid balance of liquidated claims from the date the cause of action arose until the entry of judgment.

Last amended:
Laws 1999, LB 43, § 21
~ Reissue 2010

45-103.03
Interest; how computed.

All payments made prior to trial by or on behalf of the defendant shall be subtracted from the judgment before interest as provided in subsection (1) of section 45-103.02 is added.

Last amended:
Laws 1994, LB 1183, § 4
~ Reissue 2010

45-103.04
Prejudgment interest; exceptions.

Interest as provided in section 45-103.02 shall not accrue prior to the date of entry of judgment for:

(1) Any action arising under Chapter 42; or

(2) Any action involving the state, a political subdivision of the state, or any employee of the state or any of its political subdivisions for any negligent or wrongful act or omission accruing within the scope of such employee's office or employment.

Last amended:
Laws 1999, LB 43, § 22
~ Reissue 2010

45-104
Interest; other contract obligations.

Unless otherwise agreed, interest shall be allowed at the rate of twelve percent per annum on money due on any instrument in writing, or on settlement of the account from the day the balance shall be agreed upon, on money received to the use of another and retained without the owner's consent, express or implied, from the receipt thereof, and on money loaned or due and withheld by unreasonable delay of payment. Unless otherwise agreed or provided by law, each charge with respect to unsettled accounts between parties shall bear interest from the date of billing unless paid within thirty days from the date of billing.

Last amended:
Laws 1980, LB 279, § 7
~ Reissue 2010

45-104.01
Interest; political subdivisions; delinquent taxes; special assessments.

Unless otherwise specifically provided, the interest rate assessed on delinquent payments of any taxes or special assessments owing to any political subdivision of the State of Nebraska shall be assessed at a rate of fourteen percent per annum.

Last amended:
Laws 1992, Fourth Spec. Sess., LB 1, § 4
~ Reissue 2010

45-104.02
Interest; State of Nebraska; delinquent taxes; special assessments; credits or refunds.

(1) Unless otherwise specifically provided, the interest rate assessed on delinquent payments of any taxes or special assessments owing to the State of Nebraska shall be assessed at a rate of fourteen percent per annum through December 31, 1992, and at the per annum rate determined pursuant to subsection (2) of this section after such date.

(2) Commencing January 1, 1993, the interest rate assessed pursuant to subsection (1) of this section shall be redetermined every other year. The rate shall be determined by the Tax Commissioner and shall be equal to the average short-term borrowing rate for the federal government during July of the previous year rounded to the nearest whole percentage point plus three percentage points. If the new rate does not increase or decrease the old rate by at least two percentage points, the old rate shall continue in effect.

(3)(a) The rate determined pursuant to subsection (2) of this section shall apply for the period from its effective date through the date of payment or up to the effective date of the succeeding new rate, whichever is earlier.

(b) Interest on taxes or special assessments shall be calculated using the different rates which are effective over the period of delinquency.

(c) For any taxes or special assessments that were delinquent and unpaid on or before December 31, 1992, the interest rate shall be fourteen percent per annum through December 31, 1992.

(4) For any credits or refunds of taxes or special assessments on which interest is to be determined at the rate specified in this section, the calculation of interest shall use the same rates for the same periods that are used for interest on delinquent payments.

(5) For refunds applied for on or after May 1, 1993, for any taxes that were overpaid as of December 31, 1992, the interest rate shall be seven percent per annum from the date of overpayment through December 31, 1992.

Last amended:
Laws 1993, LB 345, § 2
~ Reissue 2010

45-105
Usury; penalty.

If a greater rate of interest than is allowed in section 45-101.03 shall be contracted for or received or reserved, the contract shall not on that account be void, but if in any action on such contract, proof be made that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the plaintiff shall recover only the principal, without interest, and the defendant shall recover costs; and if interest shall have been paid thereon, judgment shall be for the principal, deducting interest paid; *Provided,* the acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest by the transaction of the agent, the principal will be held thereby as if he had done the same in person. Where the same person acts as agent for the borrower who obtains the money from the lender, he shall be deemed to be the agent of the lender also.

Last amended:
Laws 1975, LB 349, § 5
~ Reissue 2010

45-105.01
Unconstitutional.
~ Reissue 2010

45-106
Interest; warrants or orders.

All warrants or orders issued by the proper authorities of any county, city, township, school district, other municipal subdivision less than a county, or sanitary district, whose area is located partly within a municipality, shall draw interest from and after the date of presentation for payment at such rate as is fixed by the issuing authority and endorsed on the warrant. All warrants issued by the state shall draw interest at the rate of four percent per annum from the date the same are presented for payment.

Last amended:
Laws 1969, c. 51, § 109, p. 340
~ Reissue 2010

45-107
Interest; effect on purchase of certain lands.

The rate of interest fixed by sections 45-101.02 to 45-106 shall not affect interest on purchase money of school, university, and agricultural college lands, or on lands delinquent or sold for the nonpayment of taxes.

Last amended:
C.S.1929, § 45-111
~ Reissue 2010

45-108
Interest; rate; when calculated by the year.

When in any law, or in any instrument in writing specifying a rate of interest, no period of time is mentioned for which such rate is to be calculated, it shall be deemed to be by the year.

Last amended:
C.S.1929, § 45-109
~ Reissue 2010

45-109
Contracts for payment of money or indebtedness; when usurious.

Any contract for the payment of money in satisfaction of indebtedness which seeks, directly or indirectly, to prevent the debtor from discharging his obligation in full in any lawful money of the United States with the same number of dollars he originally contracted to pay, plus interest not in excess of the maximum legal contract rate, is hereby declared to constitute usury, the same as if the contract sought to bind the debtor to pay more than the maximum legal rate of interest.

Last amended:
C.S.Supp.,1941, § 45-128
~ Reissue 2010

45-110
Usurious contracts; limit of recovery.

All such contracts are hereby declared contrary to public policy and usurious, and in any action therefor the plaintiff shall recover only the same number of dollars in any lawful money of the United States as the number of dollars contracted for at the time the original contract was entered into, plus interest not exceeding the maximum legal contract rate and costs, and no more.

Last amended:
C.S.Supp.,1941, § 45-129
~ Reissue 2010

45-111
Usury; civil proceedings; testimony of lender compellable.

Any person charged with taking illegal interest may be required to answer touching the same, on oath, in any civil proceeding.

Last amended:
C.S.1929, § 45-106
~ Reissue 2010

45-112
Usury; relief; tender of principal unnecessary.

Relief to the complaining party in case of an usurious loan may be given without payment or tender by him of the principal sum.

Last amended:
C.S.1929, § 45-107
~ Reissue 2010

45-113
Usury; witness; testimony not evidence in criminal proceeding, when.

Any officer or agent of a person or a corporation, whether interested or not, may be summoned as a witness in any action for usury against such person or corporation, and required to disclose all the facts of the case, but the testimony of such witness, or the answer of the party as required in section 45-111, shall not be used against such witness or party in any criminal prosecution for perjury.

Last amended:
C.S.1929, § 45-108
~ Reissue 2010

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:
Laws 2011, LB 75, § 2
~ Cum Supp. 2012

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:
Laws 2017, LB184, § 1
~ Supp. 2017

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:
Laws 1993, LB 270, § 2
~ 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:
Laws 2017, LB184, § 2
~ Supp. 2017

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 Financial Institution Assessment 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:
Laws 2003, LB 217, § 33
~ Reissue 2010

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:
Laws 1993, LB 270, § 5
~ 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:
Laws 2017, LB184, § 3
~ Supp. 2017

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:
Laws 1993, LB 270, § 7
~ 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:
Laws 1993, LB 270, § 8
~ 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:
Laws 1993, LB 270, § 9
~ 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:
Laws 1993, LB 270, § 10
~ 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 fine and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the department and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund.

(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:
Laws 2001, LB 53, § 90
~ Reissue 2010

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:
Laws 2013, LB 279, § 2
~ Cum. Supp. 2014

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:
Laws 1993, LB 270, § 13
~ Reissue 2010

45-1,104
Federal interest rate limitations; rejected by state.

The federal limits on interest rates as provided in sections 501(a)(1), 511, and 524 of Public Law 96-221 shall not apply to loans, mortgages, credit sales, and advances made in Nebraska and are hereby rejected by the State of Nebraska pursuant to this section. Sections 521 to 523 of Public Law 96-221 are not rejected. Subject to the foregoing, the State of Nebraska elects to retain the power to establish or not establish usury limits provided under the Nebraska statutes and the Nebraska Constitution and retains the power to have such limits, if any, apply to any loan, mortgage, credit sale, or advance made in this state after July 17, 1982.

Last amended:
Laws 1988, LB 913, § 2
~ Reissue 2010

45-1,105
Terms, defined.

As used in sections 45-1,105 to 45-1,110, unless the context otherwise requires:

(1) Collateral shall mean the property subject to a security interest as defined by the Uniform Commercial Code;

(2) Consumer shall mean a natural person to whom credit is offered or extended by way of a transaction if the money, property, or services of the transaction are primarily for personal, family, or household purposes;

(3) Credit shall mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment;

(4) Creditor shall mean creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which payment of a finance charge is or may be required, whether in connection with loans, sale of property or services, or otherwise; and

(5) Default shall mean either of the following, if without justification under any law:

(a) The consumer fails to make a payment required by the agreement; or

(b) The prospect of payment, performance, or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment shall be on the creditor.

Last amended:
Laws 1983, LB 111, § 1
~ Reissue 2010

45-1,106
Consumer credit transaction; default; notice required.

(1) With respect to a consumer credit transaction, after a consumer has been in default for ten days, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he or she delivers the notice to the consumer or delivers or mails the notice to the consumer's last-known residence address.

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made; a brief identification of the credit transaction; the consumer's right to cure the default; and the amount of payment and date by which payment must be made to cure the default, or any other performance necessary to cure the default and the date by which such performance must be tendered.

Last amended:
Laws 1983, LB 111, § 2
~ Reissue 2010

45-1,107
Consumer credit transaction; default; consumer's right to cure.

(1) With respect to a consumer credit transaction, after a default a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral, except voluntarily surrendered collateral, because of such default until twenty days after a notice of the consumer's right to cure is given. The consumer shall have twenty days after the notice is given to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid charges, or by tendering any other performance necessary to cure the

default as specified in the notice of right to cure. Cure shall restore the consumer to his or her rights under the agreement as though the default had not occurred.

(2) With respect to defaults on the same obligation after a creditor has once given notice of the consumer's right to cure, the consumer shall have no further right to cure and the creditor has no obligation to proceed against the consumer or the collateral.

Last amended:
Laws 1983, LB 111, § 3
~ Reissue 2010

45-1,108
Consumer credit transaction; voluntary surrender of goods; creditor's right to enforce security interest.

Sections 45-1,105 to 45-1,107 shall not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and shall not prohibit the creditor from thereafter enforcing any security interest in the goods at any time after default.

Last amended:
Laws 1983, LB 111, § 4
~ Reissue 2010

45-1,109
Consumer credit transactions; procedures; when applicable.

Sections 45-1,105 to 45-1,110 shall apply to all consumer credit transactions in this state subject to a security interest, as defined in subdivision (35) of section 1-201, Uniform Commercial Code, entered into, extended, or renewed on or after January 1, 1984.

Last amended:
Laws 2005, LB 570, § 1
~ Reissue 2010

45-1,110
Consumer credit default procedures; not applicable to certain licensees.

Sections 45-1,105 to 45-1,110 shall not apply to any licensee operating under the Nebraska Installment Loan Act.

Last amended:
Laws 2001, LB 53, § 100
~ Reissue 2010

45-1,111
Forced sale; disposition of certain proceeds.

In any forced sale of real or personal property conducted to satisfy the claims of creditors, any proceeds of such sale which exceed the claims of such creditors shall be retained by the debtor.

Last amended:
Laws 1987, LB 335, § 3
~ Reissue 2010

45-1,112
Terms, defined.

For purposes of sections 45-1,112 to 45-1,115:

(1)(a) Credit agreement means:

(i) A contract, promise, undertaking, offer, or commitment to loan money or to grant or extend credit; or

(ii) A contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with a loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with a loan of money or grant or extension of credit, except for loans of money or grants or extensions of credit which are:

(A) Not in excess of twenty-five thousand dollars and used primarily for personal, family, or household purposes of the debtor or debtors; or

(B) Used for the purchase of and secured solely by the principal residence of the debtor or debtors.

(b) Credit agreement does not include (i) letters of credit or (ii) promissory notes, real estate mortgages, trust deeds, security agreements, financing statements, guarantee agreements, pledge agreements, or other similar documents or instruments evidencing an obligation to repay indebtedness or securing the repayment of indebtedness;

(2) Creditor means any financial institution which makes a credit agreement with a debtor;

(3) Debtor means a person or entity which obtains credit from a creditor, seeks a credit agreement with a creditor, or owes money to a creditor; and

(4) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, credit union, or savings and loan association or a holding company or affiliate or subsidiary of such an institution.

Last amended:
Laws 2003, LB 131, § 27
~ Reissue 2010

45-1,113
Action or defense based on credit agreement; requirements.

(1) A debtor or a creditor may not maintain an action or assert a defense in an action based on a credit agreement unless the credit agreement is in writing, expresses consideration, sets forth the relevant terms and conditions of the credit agreement, and is signed by the creditor and by the debtor.

(2) Subsection (1) of this section shall not apply to (a) credit extended on an account as defined in section 4-104, Uniform Commercial Code, (b) loans initiated by credit card or other type of transaction card, or (c) credit agreements as defined in subdivision (1)(a)(ii) of section 45-1,112 unless the creditor, at the time of the initial loan of money or grant or extension of credit, has given to the debtor a written notice, signed or initialed by the debtor, which contains substantially the following language: A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

(3) This section shall not be construed to limit or bar the recovery of money owed or collateral securing a loan in any way.

Last amended:
Laws 1990, LB 1199, § 2
~ Reissue 2010

45-1,114
Implied credit agreement; limitations.

A credit agreement shall not be implied under any circumstances from (1) the relationship, fiduciary or otherwise, of the creditor and the debtor, (2) the rendering of financial advice by a creditor to a debtor, or (3) consultation by a creditor with a debtor.

Last amended:
Laws 1990, LB 1199, § 3
~ Reissue 2010

45-1,115
Sections; applicability.

Sections 45-1,112 to 45-1,115 shall apply to credit agreements entered into on or after July 10, 1990.

Last amended:
Laws 1990, LB 1199, § 4
~ Reissue 2010