

**CHAPTER 1146****MORTGAGE BANKERS, BROKERS, AND LENDERS REGULATION***H.F. 613*

**AN ACT** relating to the licensing and examination of first mortgage bankers and mortgage brokers, and regulation of other mortgage lenders, and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

**Section 1. NEW SECTION. 535B.1 DEFINITIONS.**

As used in this chapter unless the context otherwise requires:

1. "Mortgage banker" means a person who does one or more of the following:
  - a. Makes at least four first mortgage loans on residential real property located in this state in a calendar year.
  - b. Originates at least four first mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.
  - c. Services first mortgage loans on residential real property located in this state.
2. "Mortgage broker" means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four first mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.
3. "Residential real property" means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.
4. "Person" means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.
5. "Licensee" means a person licensed under this chapter; however, any individual who is acting solely as an employee or agent of a mortgage banker or broker licensed under this Act need not be separately licensed.
6. "Administrator" means the superintendent of the division of savings and loan of the department of commerce.
7. "First mortgage loan" means a loan of money secured by a first lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior loan, and a refinancing of a prior loan.

**Sec. 2. NEW SECTION. 535B.2 EXEMPTIONS.**

This chapter, except for sections 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A national bank.
2. A federally chartered savings and loan association.
3. A federally chartered savings bank.
4. A federally chartered credit union.
5. A loan company licensed under chapter 536 or 536A.
6. A bank organized under chapter 524.
7. A savings and loan association or savings bank organized under chapter 534.
8. A credit union organized under chapter 533.
9. An insurance company organized under the laws of this state and subject to regulation by the commissioner of insurance.
10. A wholly owned subsidiary of an organization listed in subsections 1 through 9 if the listed organization has its principal place of business in Iowa.

11. A bank, savings and loan association, credit union, or insurance company organized or chartered under the laws of any other state provided the financial institution or insurance company has a place of business in Iowa.

12. Mortgage lenders of mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.

**Sec. 3. NEW SECTION. 535B.3 REGISTRATION.**

1. A person exempt under section 535B.2, subsection 10, 11, or 12, shall register with the administrator.

2. A registrant shall submit to the administrator a registration statement on forms provided by the administrator. The forms shall include all addresses at which business is to be conducted, the names and titles of each director and principal officer of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The registrant shall pay a fifty-dollar registration fee.

4. A registration under this chapter is not assignable.

**Sec. 4. NEW SECTION. 535B.4 GENERAL LICENSING REQUIREMENTS.**

1. A person shall not act as a mortgage banker or mortgage broker in this state or use the title "mortgage banker" or "mortgage broker" without first obtaining a license from the administrator.

2. License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next June 30 after their issuance.

7. Applications for renewals of licenses under this chapter must be filed with the administrator before June 1 of the year of expiration and must be accompanied by a fee of two hundred dollars.

**Sec. 5. NEW SECTION. 535B.5 GRANTING AND DENIAL OF LICENSE.**

1. Upon the filing of an application for a license, if the administrator finds that the financial responsibility, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, association, or other organization and of the officers, directors, and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of this chapter, the administrator shall issue the applicant a license to engage in mortgage lending, brokering, and servicing. The administrator shall approve or deny an application for a license within ninety days after the filing of the application for a license.

2. If the administrator does not so find, the license shall not be issued, and the administrator shall notify the applicant in writing of the denial and the reasons for the denial.

**Sec. 6. NEW SECTION. 535B.6 LICENSING OF FOREIGN CORPORATION.**

An applicant that is a foreign corporation must be authorized to do business in this state. A foreign corporation shall file with the license application both of the following:

1. An irrevocable consent, duly acknowledged, that suits and actions may be commenced against that licensee in the courts of this state by service of process in the usual manner provided for by the statutes and court rules of this state.

2. Proof of authorization to do business in this state.

Sec. 7. NEW SECTION. 535B.7 SUSPENSION OR REVOCATION OF LICENSE.

1. The administrator may, pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter if the administrator finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law applicable to the conduct of its business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the administrator to refuse originally to issue the license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

2. The administrator may order an emergency suspension of a licensee's license pursuant to section 17A.18, subsection 3. A written order containing the facts or conduct which warrant the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

3. A licensee may surrender a license by delivering to the administrator written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

4. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a mortgagor.

Sec. 8. NEW SECTION. 535B.8 OPERATING WITHOUT A LICENSE.

A person, who without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage banker or mortgage broker in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

Sec. 9. NEW SECTION. 535B.9 BONDS REQUIRED OF LICENSE APPLICANT.

An applicant for a license shall file with the administrator one of the following:

a. A current certified financial statement evidencing a net worth of one million dollars or more.

b. A bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

Sec. 10. NEW SECTION. 535B.10 INVESTIGATIONS AND EXAMINATIONS.

1. Within one hundred twenty days after the end of a licensee's fiscal year, the licensee shall file financial statements which are certified by an independent accounting firm.

2. For the purposes of discovering violations of this chapter or any rules adopted under this chapter or for securing information lawfully required under this chapter, the administrator may at any time and as often as the administrator deems necessary, investigate the business and examine the books, accounts, records, and files used by a licensee. However, if the financial statement required by subsection 1 shows that the licensee satisfies the minimum net worth requirement necessary to be an approved mortgagor by the United States department of

housing and urban development pursuant to its guidelines, as amended, the licensee is not subject to an investigation or examination as described in this subsection.

3. Notwithstanding subsection 2, all licensees are subject to limited examination by the administrator to investigate complaints or alleged violations about the licensee made to the administrator. Such investigation or examination by the administrator shall be restricted to acquiring information from the licensee relevant to the alleged violations.

4. In conducting any examination under this section, the administrator may rely on current reports made by the licensee which have been prepared for the following federal agencies or federally related entities:

- a. United States department of housing and urban development.
- b. Federal housing administration.
- c. Federal national mortgage association.
- d. Government national mortgage association.
- e. Federal home loan mortgage corporation.
- f. Veterans administration.

5. With respect to mortgage lenders or mortgage bankers who are specifically exempted from this chapter but are subject to sections 535B.11, 535B.12, and 535B.13, the powers of examination and investigation concerning compliance with sections 535B.11, 535B.12, and 535B.13 shall be exercised by the official or agency to whose supervision the exempted person is subject. If the administrator receives a complaint or other information concerning noncompliance with this chapter by an exempted person, the administrator shall inform the official or agency having supervisory authority over that person.

6. The total charge for an examination or investigation shall be paid by the licensee to the administrator within thirty days after the administrator has requested payment. The administrator may by rule provide for a charge for late payment of the fee. The amount of the fee shall be based on the actual costs of the examination as determined by the administrator. Examination reports and correspondence regarding these reports shall be kept confidential except as provided in this subsection, notwithstanding chapter 22. The administrator may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the administrator. The administrator may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act.

Sec. 11. NEW SECTION. 535B.11 SERVICING MORTGAGES AND PAYOFFS.

A licensee or other mortgagee who services mortgages on residential real estate located in this state shall do all of the following:

1. Disburse required funds paid by the mortgagor and held in escrow for the payment of real estate taxes and insurance payments no later than their final due date.

2. Pay penalties incurred by the mortgagor due to the licensee's or mortgagee's failure to meet the due dates referred to in subsection 1 unless the licensee or mortgagee can show that the failure was due solely to the fact that the mortgagor received a statement of the amount due more than fifteen days before the due date and has failed to remit it to the licensee or mortgagee.

3. Perform a complete escrow analysis yearly. A clear and legible copy of the yearly analysis shall be promptly mailed to the mortgagor. If there is a change in the payment amount, the analysis shall be mailed at least twenty days before the effective date of the change. The summary shall contain all of the following information:

- a. The name and address of the mortgagee.
- b. The name and address of the mortgagor.
- c. A summary of escrow account activity during the year which includes all of the following:
  - (1) The balance of the escrow account at the beginning of the year.

- (2) The aggregate amount of deposits to the escrow account during the year.
  - (3) The aggregate amount of withdrawals from the escrow account for each of the following categories:
    - (a) Payments against loan principal.
    - (b) Payments against interest.
    - (c) Payments against real estate taxes.
    - (d) Payments for real property insurance premiums.
    - (e) All other withdrawals.
  - (4) A summary of loan principal for the year as follows:
    - (a) The amount of principal outstanding at the beginning of the year.
    - (b) The aggregate amount of payments against principal during the year.
    - (c) The amount of principal outstanding at the end of the year.
- Compliance with sections 524.905, 533.16, 534.206, and 536A.20 shall constitute compliance with this subsection.

4. Answer in writing, within ten business days of receipt, any written request for payoff information received from a mortgagor or the mortgagor's designated representative.

5. Execute and deliver a release after payoff and within forty-five days after receipt of correct payment. If the licensee or mortgagee fails to execute and deliver a release of lien to the mortgagor or the mortgagor's designated representative, the mortgagor or the mortgagor's designated representative may notify in writing the administrator and any other official to whom the mortgagee is primarily subject. The administrator shall promptly mail by certified mail to the licensee or mortgagee a notice stating that the licensee or mortgagee must both release the mortgage and deliver the release to the administrator within fifteen days of receipt of said notice or face a penalty as provided in this section. If the licensee or mortgagee fails to make the release and deliver it to the administrator, the administrator may assess a penalty not to exceed fifty dollars for each day of delinquency after the fifteen days. The administrator may waive the penalty if the administrator finds the failure was not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid error.

6. If a person in connection with a first mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover such payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

Sec. 12. NEW SECTION. 535B.12 PAYMENT PROCESSING.

A licensee or other mortgagee shall not assess a late charge if full payment is received before the date late charges are authorized in the mortgage documents and shall post all periodic payments in full within two business days of receipt.

Sec. 13. NEW SECTION. 535B.13 ENFORCEMENT.

1. The administrator has cease and desist powers as follows:
  - a. For the purposes of this subsection, "administrator" means either the superintendent of savings and loans or the official or agency charged with enforcing this chapter, or parts thereof, against the person under investigation.
  - b. If the administrator has reason to believe that a person has been or is in violation of this chapter or rules adopted under this chapter, after notice and hearing, the administrator may

order a person to cease and desist from violating any provision of this chapter or rules adopted under this chapter.

c. The administrator, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of all records or other documents which the administrator deems relevant to the inquiry. In case of a refusal of a person to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, on application of the administrator, the district court of Polk county may issue an order requiring the person to comply with the subpoena and to testify. A failure to obey an order of the court to comply with the subpoena may be punished by the court as a civil contempt. A cease and desist hearing need not observe any formal rules of pleading or evidence.

d. If after the hearing, the administrator finds that the person charged has violated this chapter or rules adopted under this chapter, the administrator shall issue written findings, a copy of which shall be served upon the person charged with the violations, along with an order requiring the person to cease and desist from engaging in the violations.

e. A person aggrieved by a cease and desist order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the Polk county district court for the enforcement of the cease and desist order.

f. A proceeding for review must be initiated within thirty days after the aggrieved person receives the cease and desist order. If no proceeding is initiated, the administrator may obtain a decree of the Polk county district court for enforcement of the cease and desist order.

g. A person who violates a cease and desist order of the administrator may, after notice and hearing, and upon further order of the administrator, be subject to a penalty of not more than five thousand dollars for each act or violation of the cease and desist order.

2. The administrator may request the attorney general to enforce the provisions of this chapter. A civil enforcement action by the attorney general may be filed in equity in either the county in which the violation occurred or Polk county. A civil enforcement action by the attorney general may seek any or all of the following:

a. Temporary and permanent injunctive relief.

b. Restitution for a mortgagor aggrieved by a violation of this chapter.

c. Costs for the investigation and prosecution of the enforcement action including attorneys fees.

3. This chapter does not limit the power of the attorney general to determine that any other practice is unlawful under the Iowa consumer fraud Act, section 714.16, and to file an action under that section.

#### Sec. 14. NEW SECTION. 535B.14 RULEMAKING AUTHORITY.

The administrator may adopt, amend, or repeal rules to aid in the administration and enforcement of this chapter.

#### Sec. 15. NEW SECTION. 535B.15 LIABILITY OF STATE.

An act or omission by the state pursuant to this chapter including, but not limited to, an examination, inspection, audit, or other financial oversight responsibility shall not subject the state to liability.

Approved May 3, 1988