

LOAN BROKERS

535C.1 Title.

This chapter may be cited as the "*Iowa Loan Brokers Act*".

83 Acts, ch 146, § 1

535C.2 Definitions.

1. "*Advance fee*" means consideration of any type including a payment, fee, pay-per-call charge, or deposit, which is assessed or collected prior to the closing of a loan or the issuing of a credit card.

2. "*Borrower*" means a person who seeks the services of a loan broker.

3. "*Loan*" means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for the use of the property.

4. "*Loan broker*" or "*broker*" means a person who promises to obtain a loan or credit card or assist in obtaining a loan for another from a third person, or who promises to consider making a loan or offering to issue a credit card to a person. A loan broker does not include any of the following:

a. An attorney licensed to practice in this state while engaged in the practice of law.

b. A certified public accountant licensed to practice in this state while engaged in practice as a certified public accountant.

c. An accounting practitioner, while engaged as an accounting practitioner, who procures loans as an incidental part of the accountant's practice.

d. A governmental body or employee acting in an official capacity.

e. A financial institution, to the extent the institution's activities or arrangements are expressly approved or regulated by a regulatory body or officer acting under authority of the United States.

f. An insurance company subject to regulation by the commissioner of insurance.

g. A bank incorporated under chapter 524.

h. A credit union incorporated under chapter 533.

i. A savings and loan association or savings bank incorporated under chapter 534.

j. A mortgage broker or mortgage banker licensed or registered under chapter 535B.

k. A regulated loan company licensed under chapter 536.

l. An industrial loan company licensed under chapter 536A.

5. "*Loan brokerage agreement*" or "*agreement*" means an agreement between a loan broker and a borrower in which the loan broker promises to do any of the following:

a. Obtain a loan or credit card for a borrower.

b. Assist the borrower in obtaining a loan or credit card.

c. Consider making a loan or issuing a credit card to the borrower.

6. "*Records*" means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.

7. "*Successful procurement of a loan*" means the receipt by a borrower of the loan proceeds.

83 Acts, ch 146, § 2; 91 Acts, ch 205, §19; 93 Acts, ch 60, §13, 14

535C.2A Prohibition on advance fees.

A loan broker shall not directly or indirectly solicit, receive, or accept from a borrower an advance fee as consideration for providing services as a loan broker. A loan broker's fee may only be assessed or collected from a borrower after the successful procurement of a loan or issuance of a credit card.

93 Acts, ch 60, §15

535C.3 Disclosure statement required. Repealed by 93 Acts, ch 60, §27.

535C.3A Financial statement. Repealed by 93 Acts, ch 60, §27.

535C.4 Surety bond or trust account required. Repealed by 93 Acts, ch 60, §27.

535C.5 Filing with the administrator penalty. Repealed by 93 Acts, ch 60, §27.

535C.6 Penalty.

A loan broker who violates a provision of this chapter is guilty of a serious misdemeanor.

83 Acts, ch 146, § 6; 93 Acts, ch 60, §16

535C.7 Written agreements required.

A loan brokerage agreement shall be in writing, contain a description of the services that the broker agrees to perform for the borrower, and the conditions under which the borrower is obligated to pay the broker. The agreement shall be signed by the broker and the borrower. The broker shall give the borrower a copy of the agreement when the borrower signs the agreement.

83 Acts, ch 146, § 7; 91 Acts, ch 205, §22

535C.8 Waiver of rights.

A waiver of this chapter by a borrower prior to or at the time of entering into a loan brokerage agreement is contrary to public policy and is void. An attempt by a loan broker to have a borrower waive any rights given in this chapter is a violation of this chapter.

83 Acts, ch 146, § 8

535C.9 Rules.

The attorney general may adopt rules according to chapter 17A as necessary or appropriate to implement the purposes of this chapter.

83 Acts, ch 146, § 9; 93 Acts, ch 60, §17

535C.10 Remedies.

1. If a broker materially violates the loan brokerage agreement, the borrower may, upon written notice, void the agreement. In addition, the borrower may recover all moneys paid the broker, a penalty of twice the amount of the fee sought by the broker, other damages, and reasonable attorney's fees. A material violation includes, but is not limited to, any of the following:

- a.* Making false or misleading statements relative to the agreement.
- b.* Failure to comply with the agreement or the obligations arising from the agreement.
- c.* Failure to either grant the borrower a loan or issue a credit card or diligently attempt to obtain a loan or credit card for the borrower.
- d.* Failure to comply with the requirements of this chapter.
- e.* Soliciting or obtaining, directly or indirectly, an advance fee.

2. A violation of this chapter is a violation of the Iowa consumer fraud Act, section 714.16.

3. Remedies under this chapter are in addition to other remedies available in law or equity.

83 Acts, ch 146, § 10; 93 Acts, ch 60, §18

535C.11 Applicability.

This chapter does not apply to activities or arrangements expressly approved or regulated by the department of commerce.

83 Acts, ch 146, § 11; 91 Acts, ch 205, §23; 93 Acts, ch 60, §19

535C.11A Exemption burden of proof.

In a civil proceeding pursuant to this chapter, a person claiming to be excluded from the definition of "loan broker" or "broker" has the burden of proof in substantiating the claim.

93 Acts, ch 60, §20

535C.12 Records.

1. A loan broker shall maintain accurate records relating to transactions regulated under this chapter. The records shall include all of the following:

- a.* The accounts of the broker.
- b.* A copy of each contract in which the broker is a party, including loan brokerage agreements.
- c.* The amount of receipts received by the broker and the date the receipts were received.

2. The broker shall retain each loan brokerage agreement entered into by the broker and records pertaining to each agreement for at least two years after the agreement expires.

91 Acts, ch 205, §24; 93 Acts, ch 60, §21

535C.13 Administrative actions. Repealed by 93 Acts, ch 60, §27.

535C.14 Misrepresentation of governmental approval.

It is unlawful for a loan broker to represent or imply that the broker has been sponsored, recommended, or approved by, or that the broker's abilities or qualifications have been passed upon by a governmental entity of the state or its political subdivisions.

91 Acts, ch 205, §26; 93 Acts, ch 60, §22

535C.15 Reserved.

535C.16 Scope of chapter. Repealed by 93 Acts, ch 60, §27.