

CHAPTER 535B

MORTGAGE BANKERS AND BROKERS

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535B.1 Definitions.

As used in [this chapter](#) unless the context otherwise requires:

1. “*Administrator*” means the superintendent of the division of banking of the department of commerce.

2. Reserved.

3. “*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.

4. a. “*Mortgage banker*” means a person who does one or more of the following:

(1) Makes at least four mortgage loans on residential real property located in this state in a calendar year.

(2) Originates at least four 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.

(3) Services at least four mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen mortgage loans on residential real estate within the state and who does not sell or transfer mortgage loans, is exempt from this subparagraph if that person is otherwise exempt from the provisions of [this chapter](#).

b. “*Mortgage banker*” does not include a person who is a licensed mortgage loan originator under [chapter 535D](#).

5. “*Mortgage broker*” means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year. “*Mortgage broker*” does not include a person who is a licensed mortgage loan originator under [chapter 535D](#).

6. “*Mortgage loan*” means a loan of money secured by a lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior mortgage loan, and a refinancing of a prior mortgage loan.

7. “*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.

8. “*Natural person*” means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.

9. “*Registrant*” means a person registered under [section 535B.3](#).

10. “*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](#).

88 Acts, ch 1146, §1; 89 Acts, ch 133, §1 – 3; 91 Acts, ch 65, §1; 2005 Acts, ch 83, §1 – 3, 10; 2006 Acts, ch 1042, §12 – 14; 2009 Acts, ch 61, §26, 27, 39

Referred to in [§535.14](#)

535B.2 Exemptions.

[This chapter](#), except for [sections 535B.3](#), [535B.11](#), [535B.12](#), and [535B.13](#), does not apply to any of the following:

1. A bank, bank holding company, savings bank, savings and loan association, or credit union organized under the laws of this state, another state, or the United States, or a subsidiary owned or controlled by such a bank, bank holding company, savings bank, savings and loan association, or credit union.

2. A loan company licensed under [chapter 536](#) or [536A](#).

3. An insurance company or a subsidiary or affiliate of an insurance company organized under the laws of this state, another state, or the United States, and subject to regulation by the commissioner of insurance.

4. Mortgage lenders or 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.

5. An individual who is employed by a person otherwise exempt under [this section](#), or who, by contract, operates exclusively on behalf of a person otherwise exempt under [this section](#) to the extent that the individual is acting within the scope of the individual's employment or exclusive contract with the exempt person and is acting within the scope of the exempt person's charter, license, authority, approval, or certificate.

6. A real estate broker licensed under [chapter 543B](#) while engaged in practice as a real estate broker.

7. A nonprofit organization qualifying for tax-exempt status under the Internal Revenue Code as defined in [section 422.3](#) which offers housing services to low and moderate income families.

88 Acts, ch 1146, §2; 89 Acts, ch 83, §76; 89 Acts, ch 133, §4, 5; 96 Acts, ch 1056, §21; 2005 Acts, ch 83, §4, 10; 2008 Acts, ch 1160, §15

Referred to in [§535B.3](#), [558.70](#)

535B.3 Registration.

1. A person exempt under [section 535B.2](#), [subsection 4](#) or 7, 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, except a nonprofit organization exempt under [section 535B.2](#), [subsection 7](#), shall pay an annual registration fee of one hundred dollars.

4. A registration under [this chapter](#) is not assignable.

88 Acts, ch 1146, §3; 89 Acts, ch 133, §6; 96 Acts, ch 1056, §22; 2005 Acts, ch 83, §5, 10; 2008 Acts, ch 1160, §16

Referred to in [§535B.1](#), [535B.2](#)

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 December 31 after their issuance.
7. Applications for renewals of licenses under [this chapter](#) must be filed with the administrator before December 1 of the year of expiration on forms prescribed by the administrator. A renewal application must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, and four hundred dollars for a license to transact business as a mortgage banker. The administrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after December 1.

8. A licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a licensee shall conduct business only under one name at a time. However, the administrator may issue more than one license to the same person to conduct business under different names at the same time upon compliance for each such additional license with all of the provisions of [this chapter](#) governing an original issuance of a license.

9. In addition to the application and renewal fees provided for in [subsections 4 and 7](#), the administrator may assess application and renewal fees for each branch location of the licensee, sponsor fees, and change of sponsor fees.

88 Acts, ch 1146, §4; 89 Acts, ch 133, §7; 2006 Acts, ch 1042, §15, 16; 2007 Acts, ch 22, §95; 2008 Acts, ch 1160, §17, 18; 2009 Acts, ch 61, §28, 39

535B.4A Individual registration requirements — fees. Repealed by 2009 Acts, ch 61, § 37, 39. See [chapter 535D](#).

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.

88 Acts, ch 1146, §5

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.

88 Acts, ch 1146, §6

535B.6A Change of name — change of control — notice and approval required.

1. A licensee shall submit a notice of name change and a twenty-five dollar fee for each license to the administrator thirty days prior to changing the name of the licensee.

2. The prior written approval is required whenever a change in control of a licensee or registrant is proposed. For purposes of [this section](#), “control” means as defined in [section 524.103](#). The administrator may require the licensee to provide any information deemed necessary by the administrator to determine whether a new application is required. At the time of requesting the approval, the licensee or registrant requesting the change of control shall pay to the administrator a fee of one hundred dollars.

2006 Acts, ch 1042, §18

535B.7 Disciplinary action.

1. The administrator may, pursuant to [chapter 17A](#), take disciplinary action against a licensee 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.

d. The licensee has violated an order of the administrator.

2. The administrator may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the administrator or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The administrator may order an emergency suspension of a licensee’s license pursuant to [section 17A.18A](#). A written order containing the facts or conduct which warrants 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.

4. 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](#).

5. 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.

6. 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.

88 Acts, ch 1146, §7; 98 Acts, ch 1202, §42, 46; 2006 Acts, ch 1042, §19; 2008 Acts, ch 1160, §20; 2009 Acts, ch 61, §29, 39

535B.7A Prohibited acts.

It is a violation of [this chapter](#) for a licensee to engage in any of the prohibited acts or practices in [section 535D.17](#).

2009 Acts, ch 61, §30, 39; 2009 Acts, ch 179, §43

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.

88 Acts, ch 1146, §8; 2008 Acts, ch 1160, §21; 2009 Acts, ch 61, §31, 39

535B.9 Bonds required of license applicants.

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state, together with evidence of whether the applicant is seeking to transact business as a mortgage broker or as a mortgage banker. Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of one hundred thousand dollars. The bond shall be continuous in nature until canceled by the surety with not less than thirty days’ notice in writing to the mortgage broker or mortgage banker and to the administrator indicating the surety’s intention to cancel the bond on a specific date. 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](#).

2. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the administrator; if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

88 Acts, ch 1146, §9; 89 Acts, ch 133, §8; 2005 Acts, ch 83, §7, 10; 2006 Acts, ch 1042, §20; 2008 Acts, ch 1160, §22; 2009 Acts, ch 61, §32, 39

535B.9A Continuing education requirements. Repealed by 2009 Acts, ch 61, § 38, 39.

535B.10 Investigations and examinations.

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

2. For the purposes of discovering violations of [this chapter](#) or any related rules or for securing information lawfully required under [this chapter](#), the administrator may at any time and as often as the administrator deems necessary, but in no event less frequently than once during each two-year period, investigate the business and examine the books, accounts, records, and files used by a licensee.

3. 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. United States department of veterans affairs.

4. 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.

5. a. The licensee shall pay the cost of the examination or investigation as determined by the administrator based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance

bureau as determined by the administrator, incurred in the discharge of duties imposed upon the administrator by [this chapter](#).

b. 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. Failure to pay the charge within thirty days shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation charge for each day the payment is delinquent.

6. a. All papers, documents, examination reports, and other writings relating to the supervision of licensees and registrants shall be kept confidential except as provided in [this subsection](#), notwithstanding [chapter 22](#).

b. The administrator may furnish information relating to the supervision of licensees and registrants to the federal agencies or federally related entities listed in [subsection 3](#), the federal deposit insurance corporation, the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal home loan bank, a financial institution regulatory authority of any other state, a professional licensing authority of this state or any other state, or a law enforcement agency, or to any official or supervising examiner of such regulatory authorities.

c. The administrator may release summary complaint information regarding a particular licensee so long as the information does not specifically identify the complainant.

d. The administrator may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information.

e. The administrator may prepare and circulate reports provided by law.

f. The administrator may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the administrator.

g. The administrator may also provide this information to the attorney general for purposes of enforcing [this chapter](#) or the consumer fraud Act, [section 714.16](#).

88 Acts, ch 1146, §10; 2005 Acts, ch 3, §89; 2006 Acts, ch 1042, §21; 2008 Acts, ch 1160, §23, 24; 2009 Acts, ch 26, §16; 2009 Acts, ch 61, §33, 39

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. a. 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:

(1) The name and address of the mortgagee.

(2) The name and address of the mortgagor.

(3) A summary of escrow account activity during the year which includes all of the following:

(a) The balance of the escrow account at the beginning of the year.

(b) The aggregate amount of deposits to the escrow account during the year.

(c) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(i) Payments against loan principal.

(ii) Payments against interest.

(iii) Payments against real estate taxes.

(iv) Payments for real property insurance premiums.

(v) All other withdrawals.

(d) A summary of loan principal for the year as follows:

- (i) The amount of principal outstanding at the beginning of the year.
- (ii) The aggregate amount of payments against principal during the year.
- (iii) The amount of principal outstanding at the end of the year.

b. Compliance with [sections 524.905, 533.315, 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 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 the 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.

7. When the servicing of a mortgage loan is transferred, sold, purchased, or accepted by a licensee or registrant, the licensee or registrant who is transferring or selling the servicing shall issue to the mortgagor, within fifteen calendar days prior to the effective date of the transfer, a notice which shall include at a minimum:

- a. The name and address of the licensee or registrant transferring or selling the servicing.
- b. The name and address of the licensee or registrant accepting or purchasing the servicing.
- c. The effective date of the transfer.
- d. A statement concerning the effect of the transfer on the terms and conditions of the mortgage.
- e. The address where payments are to be submitted for at least the next three months.
- f. The name and address of the licensee or registrant to whom questions related to the mortgage may be addressed.

88 Acts, ch 1146, §11; 89 Acts, ch 133, §9; 2006 Acts, ch 1042, §22, 23; 2007 Acts, ch 174, §94

Referred to in [§535B.2, 535B.10](#)

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.

88 Acts, ch 1146, §12

Referred to in [§535B.2, 535B.10](#)

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 banking 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.

88 Acts, ch 1146, §13; 91 Acts, ch 65, §2

Referred to in [§535B.2](#), [535B.10](#)

535B.14 Rulemaking authority.

The administrator may adopt, amend, or repeal rules to aid in the administration and enforcement of [this chapter](#), including rules providing the grounds for denial of a license based on information received as a result of a background check, character and fitness grounds, and any other grounds for which a licensee may be disciplined.

88 Acts, ch 1146, §14; 2007 Acts, ch 170, §5; 2009 Acts, ch 61, §34, 39

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.

88 Acts, ch 1146, §15

535B.16 Notice to administrator.

A licensee or registrant maintaining an office in the state shall notify the administrator in writing at least thirty days before closing or otherwise ceasing operations at any office in the state.

89 Acts, ch 133, §10

535B.17 Powers and duties of the administrator — waiver authority.

In addition to any other duties imposed upon the administrator by law, the administrator may participate in a multistate automated licensing system for mortgage bankers, mortgage brokers, and mortgage loan originators. For this purpose, the administrator may establish by rule or order new requirements as necessary, including but not limited to requirements that license applicants submit to fingerprinting and criminal history checks, and pay fees therefor.

2006 Acts, ch 1042, §24; 2007 Acts, ch 22, §96; 2009 Acts, ch 61, §35, 39

535B.18 Mortgage call reports.

Each licensee shall submit to the nationwide mortgage licensing system and registry, as defined in [section 535D.3](#), reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

2009 Acts, ch 61, §36, 39