

## CHAPTER 535B

## MORTGAGE BANKERS, MORTGAGE BROKERS, AND CLOSING AGENTS

Referred to in §524.211, 524.606, 533A.2, 535C.2, 535D.3, 535D.14, 536.12, 536A.23, 546.3, 669.14, 714E.1

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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. “*Closing agent*” means a person who is not a party to the real estate transaction, who provides real estate closing services.
3. “*Licensee*” means a person licensed under this chapter; however, any natural person who is acting solely as an employee or agent of a mortgage banker, mortgage broker, or closing agent licensed under this chapter need not be separately licensed under this chapter.
4. “*Mortgage banker*” means a person who does one or more of the following:
  - a. Makes at least four mortgage loans on residential real property located in this state in a calendar year.
  - b. 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.
  - c. 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 paragraph if that person is otherwise exempt from the provisions of this chapter.
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.
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. “*Party to the real estate transaction*” means, with respect to a particular real estate transaction, a lender, seller, purchaser, or borrower.
8. “*Person*” means a natural person, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.
9. “*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.

10. “*Registrant*” means a person registered under section 535B.3.

11. “*Real estate closing services*” means the administrative and clerical services required to carry out the conveyance or transfer of real estate or an interest in real estate located in this state to a purchaser or lender. “*Real estate closing services*” include but are not limited to preparing settlement statements, determining that all closing documents conform to the parties’ contract requirements, ascertaining that the lender’s instructions have been satisfied, conducting a closing conference, receiving and disbursing funds, and completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction. “*Real estate closing services*” do not include performing solely notarial acts as provided in chapter 9B.

12. “*Residential real estate*” means the same as defined in section 535D.3.

13. “*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.

14. “*Trust account*” means a checking account with a federally insured bank, savings and loan association, credit union, or savings bank, which is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments that are received by a closing agent to effect a real estate closing.

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; 2010 Acts, ch 1111, §1, 13; 2011 Acts, ch 34, §130; 2012 Acts, ch 1050, §45, 60

Referred to in §535.14

[T] 2012 amendment to subsection 11 takes effect January 1, 2013; 2012 Acts, ch 1050, §60

[T] Subsection 11 amended

### **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, except when acting as a closing agent.

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.

8. An attorney licensed to practice law in this state or the attorney’s employees or agents acting under the attorney’s direction, in a transaction where the conduct of the attorney is regulated by the Iowa supreme court in its capacity as disciplinary authority over attorneys.

9. An officer or employee of the federal government, any state government, or a political subdivision of the state acting in an official capacity.

10. A qualified intermediary or an exchange accommodation titleholder facilitating an exchange under section 1031 of the Internal Revenue Code whose role in the transaction is limited to acting in such a capacity.

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; 2010 Acts, ch 1111, §2, 13

Referred to in §535B.2A, 535B.3, 558.70

#### **535B.2A Closing agents affiliated with attorneys.**

1. A closing agent affiliated with an attorney is not exempt from licensure under this chapter if the closing agent engages in transactions not exempt under section 535B.2, subsection 8.

2. Licensure under, and compliance with the provisions of, this chapter shall not exempt any attorney from discipline by the Iowa supreme court in its capacity as regulatory authority over attorneys licensed to practice in this state, nor from discipline by the regulatory authorities over attorneys licensed in other jurisdictions.

3. If a complaint is filed with the administrator against a closing agent affiliated with an attorney licensed to practice in this state, the administrator shall promptly give notice of the complaint to the Iowa supreme court or its designee, and cooperate in any disciplinary investigation which the court initiates against the attorney. On request of the court, the administrator shall stay any pending disciplinary action to the extent that the court determines necessary to avoid prejudice to a disciplinary action against the attorney.

2010 Acts, ch 1111, §3, 13

#### **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, mortgage broker, or closing agent in this state or use the title “mortgage banker” or “mortgage broker” without first obtaining a license from the administrator.

2. a. 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.

b. The administrator may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3, and may participate in the nationwide mortgage licensing system and registry if this requirement is implemented. In the event the requirement is implemented, the administrator may establish by rule or order new requirements as necessary and appropriate, including but not limited to requirements that applicants, and officers, directors, and others in a position of authority in relation to the applicant, submit to fingerprinting and criminal history checks, and pay associated fees relating thereto.

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, four hundred dollars for a license to transact business as a mortgage banker, and two hundred dollars for a license to transact business as a closing agent. The administrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after December 1.

8. A mortgage banker or mortgage broker licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a mortgage banker or mortgage broker 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 mortgage banker or mortgage broker license with all of the provisions of this chapter governing an original issuance of a license.

9. A licensee may not establish branch locations outside of the United States.

10. 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; 2010 Acts, ch 1111, §4, 13; 2011 Acts, ch 102, §6

**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 as a mortgage broker, mortgage banker, or closing agent. 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; 2010 Acts, ch 1111, §5, 13

#### **535B.6 Licensing of certain corporations.**

1. An applicant that is incorporated under the laws of another state in the United States must be authorized to do business in this state. Such a corporation shall file with the license application both of the following:

a. 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.

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

2. Businesses that are incorporated outside of the United States are not eligible for a license.

88 Acts, ch 1146, §6; 2011 Acts, ch 102, §7

#### **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, mortgage broker, or closing agent 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; 2010 Acts, ch 1111, §6, 13

#### **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, mortgage banker, or closing agent. 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 for applicants seeking to transact business as a mortgage broker or mortgage banker. For applicants seeking to transact business as a closing agent, the bond shall be in the amount of twenty-five thousand dollars, unless the administrator by rule establishes a higher bond amount. 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, mortgage banker, or closing agent and to the administrator indicating the surety’s intention to cancel the bond on a specific date.

2. For applicants seeking to transact business as a mortgage broker or mortgage banker, 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.

3. For applicants seeking to transact business as a closing agent, 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 all moneys that become due or owing to the state from the applicant by virtue of this chapter.

4. 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.

5. A licensee may not act as a closing agent unless the bond requirements in this section are in place at the time of a real estate closing.

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; 2010 Acts, ch 1111, §7, 13

#### **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.

h. The administrator may furnish information relating to supervision of closing agent licensees whose activities relate to the issuance of title guaranty certificates issued by the title guaranty division of the Iowa finance authority to the title guaranty division. The title guaranty division may use this information to satisfy its reinsurance requirements and may provide the information to its reinsurer to the extent necessary to satisfy reinsurer requirements provided the reinsurer agrees to maintain the confidentiality of the information. The title guaranty division shall maintain the confidentiality of the information provided pursuant to this paragraph in all other respects.

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; 2012 Acts, ch 1017, §25

[T] Subsection 6, NEW paragraph h

#### **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, 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; 2012 Acts, ch 1017, §135

Referred to in §535B.2, 535B.10

[T] Subsection 3, paragraph b amended

#### **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 Civil enforcement authority.**

1. If the administrator believes that a person has engaged in, or is about to engage in, an act or practice that constitutes or will constitute a violation of this chapter, the administrator may apply to the district court for an order enjoining such act or practice. Upon showing by the administrator that such person has engaged, or is about to engage, in any such act or practice, the district court shall grant an injunction.

2. The administrator may investigate or initiate a complaint against a person who is not licensed under this chapter to determine whether the person is violating this chapter.

3. In addition to or as an alternative to applying to the district court for an injunction, the administrator may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, including to cease and desist from conducting business or from any harmful activities or violations of law or regulation; may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation; may order the person to pay restitution; and may order the person to pay the costs for the investigation and prosecution of the enforcement action including attorney fees.

4. Before issuing an order under subsection 3, the administrator shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for in disciplinary proceedings involving a licensee under this chapter.

5. A person aggrieved by the imposition of a civil penalty under subsection 3 may seek judicial review pursuant to section 17A.19.

6. An action to enforce an order under this section may be joined with an action for an injunction.

7. 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 contained in section 714.16, and to file an action under that section.

88 Acts, ch 1146, §13; 91 Acts, ch 65, §2; 2010 Acts, ch 1111, §8, 13

Referred to in §535B.2, 535B.10

#### **535B.14 Administrative authority.**

The administrator shall have broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing 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; 2010 Acts, ch 1111, §9, 13

**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.** Repealed by 2010 Acts, ch 1111, §12, 13. See § 535B.4.

**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

**535B.19 Trust account requirements for closing agents.**

A licensee acting as a closing agent shall comply with all of the following:

1. All moneys received for disbursement during a real estate closing shall be deposited in a trust account and, when deposited, the moneys shall be designated as trust funds or trust accounts or under some other appropriate name indicating that the moneys are not the moneys of the licensee.

2. All trust account moneys shall be deposited in a financial institution that is insured by the federal deposit insurance corporation or national credit union share insurance fund unless the transaction does not involve residential real estate and another financial institution has been designated in writing in the escrow instructions.

3. If the trust account earns interest and the interest earned is retained by any party other than the party to the real estate transaction who is the owner of the funds, the licensee shall disclose this fact in writing to the parties to the transaction.

4. A licensee shall enter into a written agreement to pay interest to a party to a transaction, or to a third party if requested by the parties to a transaction, if the client's trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the licensee shall take into consideration all relevant factors including the following:

a. The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited.

b. The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms.

c. The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

5. The licensee shall notify the administrator of the name of each financial institution in which a trust account is maintained and the name of the account on forms acceptable to the administrator. A licensee may maintain more than one trust account provided it advises the administrator of the multiple accounts.

6. A licensee shall only deposit trust funds in a trust account and shall not commingle the licensee's personal funds or other funds in the trust account with the exception that a licensee may deposit and keep a sum not to exceed one thousand dollars in the trust account from the licensee's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account or to advance funds to pay incidental fees as permitted in section 535B.20, subsection 2.

7. Moneys deposited in a trust account are not subject to execution or attachment or to any claim against the licensee.

8. A licensee shall not knowingly keep or cause to be kept any money in any bank, credit union, or other financial institution under any name designating the moneys as belonging to a client of the licensee, unless the money was actually entrusted to the licensee for deposit in trust.

2010 Acts, ch 1111, §10, 13

**535B.20 Disbursing from a trust account.**

A licensee acting as a closing agent shall not make, in a real estate closing, a disbursement from a trust account on behalf of another person, unless the following conditions are met:

1. The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been transferred electronically to or deposited into the trust account of the closing agent and are available for withdrawal and disbursement, or have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day after the date of disbursement.

2. Nothing in this section prohibits a closing agent licensee from advancing funds not exceeding one thousand dollars from a trust account or otherwise on behalf of a party to a real estate closing for the purpose of paying incidental fees, such as conveyance and recording fees, in order to effect and close the sale, purchase, exchange, transfer, encumbrance, or lease of residential real property that is the subject of the real estate closing.

2010 Acts, ch 1111, §11, 13

Referred to in §535B.19