

Kansas Mortgage Business Act Amendments; SB 369

SB 369 makes several amendments to the Kansas Mortgage Business Act (KMBA).

Definitions

The bill defines the following terms:

- **Application**—the submission of a consumer’s financial information, including the consumer’s name, income, and Social Security number to obtain a credit report; the property address; an estimate of the value of the property; and the mortgage loan amount sought, for the purpose of obtaining an extension of credit;
- **Individual**—a human being;
- **Mortgage servicer**—any person engaged in mortgage servicing;
- **Mortgage servicing**—collecting payment, remitting payment for another, or the right to collect or remit payment of any of the following: principal, interest, tax, insurance, or other payment under a mortgage loan; and
- **Not-for-profit**—a business entity that is granted tax-exempt status by the Internal Revenue Service.

The bill also updates the definition of “mortgage business” to include the business of holding the rights to mortgage loans in the primary market. The term “mortgage business” is found in various provisions to incorporate all activities mortgage companies engage in under the KMBA. The bill updates the definition of “primary market” to mean a market where a mortgage business is conducted, including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction. Additionally, the bill clarifies and reorders other existing definitions.

Entities Exempt from Licensing Requirements

The bill adds not-for-profit entities providing loans in conjunction with a mission of building or rehabilitating affordable homes to low-income consumers to the list of entities exempt from the licensing requirements of the KMBA.

The bill also specifies that any person licensed as a supervised lender under the Uniform Consumer Credit Code (UCCC) [KSA 2015 Supp. 16a-2-301 *et seq.*] and who conducts mortgage business is no longer exempt from licensing requirements and therefore is a Kansas mortgage company licensed under the KMBA. [*Note:* An estimated 150 supervised lenders that conduct mortgage business are no longer required to file notification forms and associated annual and volume fees as supervised lenders under the UCCC by moving to being licensed under the KMBA.]

Licensing Requirements

Under the bill, non-depository entities conducting mortgage business are required to be licensed under the KMBA. The bill also states a license or registration becomes effective as of the date specified in writing by the State Bank Commissioner (Commissioner). The definition of Commissioner is modified to include the Commissioner's designee, who is the Deputy Commissioner of the Consumer and Mortgage Lending Division of the Office of the State Bank Commissioner.

Display of License

The bill removes the requirement that a licensed mortgage company display its paper license on or in a physical building of its principal place of business and any branch office. Instead, the bill requires the company to make evidence of the licensure of each licensed location in a way that reasonably assures recognition by consumers and members of the general public, which could mean posted electronically.

Solicitations and Advertisements

The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (commonly referred to as the SAFE Act) requires a mortgage business to display its Nationwide Mortgage Licensing System and Registry (NMLS) license number on solicitations and advertisements. The bill removes the requirement that the company also display a separate Kansas license number. The mortgage company is required to maintain a record of all solicitations and advertisements for 36 months.

New Powers Granted to the Commissioner

The bill grants the Commissioner the authority to receive and act on consumer complaints. The Commissioner is able to provide guidance to persons and groups on their rights and duties under the KMBA.

Additionally, the bill permits the Commissioner to enter into any informal agreement, rather than a formal order, with a mortgage company for a plan of action to address violations of law. The informal agreement will not be subject to the Kansas Administrative Procedure Act (KAPA), the Kansas Judicial Review Act, or the Kansas Open Records Act. The informal agreement will not be considered an order or other agency action and will be considered confidential examination material. Additionally, the informal agreement will not be subject to subpoena, discovery, or admissible in evidence in any private civil action. The provisions relating to informal agreements expire on July 1, 2021.

The bill allows the Commissioner to issue, amend, and revoke written administrative guidance documents in accordance with KAPA.

Waiver of Liability

The bill specifies that no liability will be imposed under the KMBA for an act done or omitted by rule and regulation or written administrative interpretation of the Commissioner, except for refund of an excess charge. After the act or omission, the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid.

Compliance Requirements for Mortgage Companies with No Bona Fide Office

The bill clarifies bond requirements for a mortgage company with no *bona fide* office to be the same as those for a company with a *bona fide* office, except the surety bond requirement will continue to differ. (Continuing law requires a \$100,000 surety bond for a mortgage company that does not maintain a *bona fide* office, and a \$50,000 surety bond for a company that maintains a *bona fide* office.)

Further, the bill allows a mortgage company with no *bona fide* office to submit a consolidated financial statement of the parent company, in lieu of a separate balance sheet, in order to satisfy a minimum net worth of \$50,000.

Information Provided by the Mortgage Company

The bill removes the requirement that a mortgage company maintain a journal of mortgage transactions. The bill clarifies the documentation a company must maintain for a mortgage transaction to be held and made available to the Commissioner, including:

- The name, address, and telephone number of each loan applicant;
- The type of loan applied for and the date of application; and
- The disposition of each loan application, including the date of loan funding; loan denial; withdrawal; name of lender, if applicable; and name of the loan originator and any compensation or other fees received by the loan originator.

Annual Report

The bill amends the annual reporting requirements for mortgage companies to include reports filed with the NMLS.