

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2090
(Industry and Business Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact chapter 13-12 of the North Dakota Century Code, relating to residential mortgage lenders; to amend and reenact sections 13-04.1-01, 13-04.1-02.1, 13-04.1-03, 13-04.1-08, 13-04.1-08.1, 13-04.1-09, 13-04.1-09.3, 13-04.1-10, 13-04.1-13, 13-04.1-14, and 13-04.1-17 of the North Dakota Century Code, relating to money brokers; to repeal section 13-04.1-16 of the North Dakota Century Code, relating to call reports; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-01. Administration.

The department of financial institutions shall use its facilities to administer and enforce this chapter. ~~Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter.~~ The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

SECTION 2. AMENDMENT. Section 13-04.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02.1. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. Residential mortgage lenders licensed under chapter 13-12;
6. Individuals licensed under chapter 13-10 solely pursuant to the individual's official duties as a mortgage loan originator;
- ~~6.7.~~ State or federal agencies and employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
- ~~7.8.~~ Institutions chartered by the farm credit administration;
- ~~8.9.~~ Trust companies;
- 9.10. Any other person or business regulated and licensed to lend money by the state of North Dakota;

- ~~40-11.~~ A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson;
- ~~41-12.~~ Any person, retail seller, or manufacturer providing or arranging financing for its own property or inventory held as a normal course of business, or to leases on any real property;
- ~~42-13.~~ A bona fide pawnbrokering transaction made by a pawnbroker licensed by a North Dakota county or municipality;
14. A certified development corporation that qualifies as a nonprofit entity under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
- a. Loan products primarily limited to the small business administration, United States department of agriculture, or other government loan products; or
 - b. Nongovernmental loan products that are limited to loans to promote community development or home ownership, and these loans are offered with favorable terms including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance; or
- ~~43-15.~~ A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in a given calendar year, makes these loans to promote community development or home ownership, and offers these loans on favorable terms, including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance.

SECTION 3. AMENDMENT. Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-03. Application for money broker license.

Every application for a money broker license or branch registration, or for a renewal thereof, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department shall deem necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further require any ~~application~~applicant to provide additional information which is not requested on the application form. The applicant must register with the North Dakota secretary of state if so required.

SECTION 4. AMENDMENT. Section 13-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-08. Revocation of license - Suspension of license - Surrender of license.

1. The commissioner may issue ~~and serve~~ upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
 - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.

- d. The licensee has failed to maintain the required bond.
- e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty days of the date the order is served upon the licensee; ~~or if the order is final.~~ If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order shall be final suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, ~~upon written notice,~~ enter an order suspending such license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by ~~delivering it to~~ providing the department of financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

SECTION 5. AMENDMENT. Section 13-04.1-08.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-08.1. Suspension and removal of money broker officers and employees.

1. The commissioner of financial institutions may issue ~~and serve~~ upon a current or former money broker officer or employee and upon the licensee involved an order stating:
 - a. That the current or former officer or employee is ~~willfully~~ engaging or has ~~willfully~~ engaged in any of the following conduct:
 - (1) Violating a law, rule, order, or written agreement with the commissioner.
 - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
 - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
 - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a ~~money broker~~ financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, ~~or if the order shall be final.~~ If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order shall be final suspending or removing the current or former employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon ~~service of the final order~~ issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a money broker pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.

5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the money broker, or both. The order is effective immediately upon service issuance of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. ~~Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.~~

SECTION 6. AMENDMENT. Section 13-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-09. Prohibited acts and practices.

It is a violation of this chapter for a person subject to this chapter to knowingly:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.
7. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
10. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.

11. Negligently make any false statement or ~~knowingly and willfully~~ make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide ~~mortgage~~multistate licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency.
12. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in money broker business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.
17. Enter any agreement that constitutes a precomputed loan.

SECTION 7. AMENDMENT. Section 13-04.1-09.3 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-09.3. Maximum charges permitted for loans - Installment payments - Permitted charges.

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive charges in excess of five percent of the payment. For loans originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent payment, a charge may not be made for the subsequent default. ~~This restriction does not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; and the identifiable charge or premium for insurance provided for by rule.~~
3. The restrictions outlined in subsections 1, 2, and 4 do not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; or the identifiable charge or premium for insurance provided for by rule.
4. Additional restrictions for small loans originated for less than two thousand dollars include the following:
 - a. Installment loans must be paid in equal installments as agreed to by the parties within the loan contract. However, the maximum term for installment loans may not exceed thirty-six months, and a balloon payment is prohibited.

- b. Outstanding balances of existing loans may be refinanced into a new small loan of less than two thousand dollars, but the combination of any refinance fees along with any fees collected as part of the original loans may not exceed one hundred dollars per calendar year.
- c. Additional charges may be assessed as part of a loan extension or deferment of payment agreed to by the parties within the agreement. However, a licensee may not contract for or receive charges in excess of one hundred dollars for these loan extensions or deferments per calendar year.

SECTION 8. AMENDMENT. Section 13-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-10. Orders and injunctions.

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order which is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public; provided, however, that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if such request is made within ten days after receipt of the order. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. Apply to the district court of ~~any county in this state~~ Burleigh County, for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

SECTION 9. AMENDMENT. Section 13-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-13. Penalty.

Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed ~~five thousand dollars per violation upon a person or agency who willfully~~ one hundred thousand dollars for each occurrence and one thousand dollars per day for each day the violation continues after issuance of the order against any person who violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the ~~state treasurer~~ department of financial institutions and deposited in the financial institutions regulatory fund.

SECTION 10. AMENDMENT. Section 13-04.1-14 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-14. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide ~~mortgage~~multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to such information or material after the information or material has been disclosed to the nationwide ~~mortgage~~multistate licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide ~~mortgage~~multistate licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

SECTION 11. AMENDMENT. Section 13-04.1-17 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-17. Report to nationwide ~~mortgage~~multistate licensing system and registry.

Notwithstanding state privacy law, the commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide ~~mortgage~~multistate licensing system and registry subject to the provisions contained in section 13-10-15.

SECTION 12. Chapter 13-12 of the North Dakota Century Code is created and enacted as follows:

13-12-01. Administration.

The department of financial institutions shall administer and enforce this chapter. The department may promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

13-12-02. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means an individual who seeks out, or is solicited by a residential mortgage lender for the purpose of residential mortgage lending.
2. "Commissioner" means the commissioner of the department of financial institutions.
3. "Net branch" means an office at which a licensed residential mortgage lender allows a separate person that does not hold a valid North Dakota residential mortgage lender license to originate loans under the license of the residential mortgage lender.
4. "Net branch arrangement" means an arrangement under which a licensed residential mortgage lender enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses; establishing, leasing, or renting the branch premises; entering other contractual relationships with vendors such as for telephones, utilities, and advertising; having control of a corporate checkbook; or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.
5. "Precomputed loan" means a loan that is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.
6. "Residential mortgage lender" means a person that, in the ordinary course of business, engages in residential mortgage lending.
7. "Residential mortgage lending" means the act of arranging or providing residential mortgage loans as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide residential mortgage loans for a person.
8. "Residential mortgage loan" means residential mortgage loan as defined in subsection 12 of section 13-10-02.
9. "Residential real estate" means residential real estate as defined in subsection 13 of section 13-10-02.

13-12-03. Residential mortgage lender license required.

Except as otherwise provided, a person other than a residential mortgage lender licensed and authorized under this chapter may not engage in residential mortgage lending in the state without a residential mortgage lender license issued by the commissioner. A person engages in residential mortgage lending if the borrower resides in North Dakota.

13-12-04. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. Individuals licensed under chapter 13-10 solely pursuant to the individual's official duties as a mortgage loan originator;
6. State or federal agencies and employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson;
10. A certified development corporation that qualifies as a nonprofit entity under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
 - a. Loan products primarily limited to the small business administration, United States department of agriculture, or other government loan products; or
 - b. Nongovernmental loan products that are limited to loans to promote community development or home ownership, and these loans are offered with favorable terms including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance; or
11. A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in a given calendar year, makes these loans to promote community development or home ownership, and offers these loans on favorable terms, including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance.

13-12-05. Application for residential mortgage lender license.

Every application or renewal for a residential mortgage lender license or branch registration must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department deems necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further require any applicant to provide additional information which is not requested on the application form. The applicant must register with the secretary of state, if so required.

13-12-06. Fee to accompany application for residential mortgage lender license.

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-12-05. At the time of making the application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for the annual license fee. In addition, the applicant must pay a fifty dollar annual fee for each branch location registered to engage in

residential mortgage lending in this state. Fees must be deposited in the financial institutions regulatory fund.

13-12-07. Surety bond required.

1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand dollars. The surety bond must be in a form prescribed by the commissioner.
2. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
3. Immediately upon recovery of any action on the bond, the licensee shall file a new bond.

13-12-08. Minimum net worth required.

A minimum net worth must be continuously maintained by every licensee in accordance with this section.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
2. If the net worth of a licensee falls below the minimum net worth set forth in this section, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner which states the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

13-12-09. Expiration and renewal of license.

All licenses expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the license, the department may charge an additional fee of fifty dollars for the renewal of the license. A residential mortgage lender license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a residential mortgage lender license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The residential mortgage lender license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

13-12-10. Powers of the department of financial institutions.

The department of financial institutions may:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Establish codes of ethical conduct for licensees.

13-12-11. Manner in which records to be kept.

Every residential mortgage lender licensed under this chapter shall keep a record of all sums collected by the residential mortgage lender and of all loans completed as a result of the lender's efforts for a period of six years from the date of last entry. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

13-12-12. Revocation of license - Suspension of license - Surrender of license.

1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds:
 - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue a license.
 - d. The licensee has failed to maintain the required bond.
 - e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds the record so warrants, the commissioner may enter a final order. The final order suspending or revoking the license is final.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, it may enter an order suspending the license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by providing the department of financial institutions with written notice of its surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

13-12-13. Suspension and removal of residential mortgage lender officers and employees.

1. The commissioner may issue and serve upon a current or former residential mortgage lender officer or employee and upon the licensee involved an order stating:
 - a. That the current or former officer or employee is engaging or has engaged in any of the following conduct:

- (1) Violating a law, rule, order, or written agreement with the commissioner.
 - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
 - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
- b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a residential mortgage lender.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
 3. If a hearing is not requested within twenty days of the date the order is served, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or removing the current or former employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
 4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a residential mortgage lender pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
 5. When a current or former officer, employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the residential mortgage lender, or both. The order is effective immediately upon issuance and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

13-12-14. Prohibited acts and practices.

It is a violation of this chapter for a person subject to this chapter to:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.

6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.
7. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law or rule, applicable to any business authorized or conducted under this chapter.
10. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.
11. Negligently make any false statement or make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide multistate licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency.
12. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in mortgage lending business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.
17. Enter any agreement that constitutes a precomputed loan.

13-12-15. Advance fees prohibited - Exception.

A residential mortgage lender may not take any type of fee in advance before the funding of the loan, unless the residential mortgage lender is licensed under this chapter. A residential mortgage lender licensed under this chapter may accept an advance expense deposit which may not exceed the residential mortgage lender's good-faith estimate of the actual cost of any appraisal or credit reports performed by an independent appraiser or independent credit reporting agency and required by the originating lender for the evaluation of the potential borrower's loan application. Any expense deposit that exceeds the actual cost of any appraisal or credit report must be promptly refunded to the borrower or credited to the borrower's account at the time of the loan closing. A residential mortgage lender may also charge a fee in advance to lock an interest rate.

13-12-16. Maximum charges permitted for loans - Installment payments - Permitted charges.

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. A licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. A licensee may not contract for or receive charges in excess of five percent of the payment. For loans originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. If the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent payment, a charge may not be made for the subsequent default.
3. The restrictions outlined in subsections 1 and 2 do not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; and the identifiable charge or premium for insurance provided for by rule.

13-12-17. Orders and injunctions.

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order which is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public, provided that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if a request is made within ten days after receipt of the order. A hearing to appeal must be held in accordance with chapter 28-32.
2. Apply to the district court of Burleigh County for an injunction restraining the person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction of engaging or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

13-12-18. Investigations, subpoenas, and examination authority.

In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. The department of financial institutions in its discretion:
 - a. May make a public or private investigation or examination within or outside this state as it deems necessary to determine whether a person has violated or is about to violate any provision of this chapter or rule, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of

- the department associated with the visitation provided for by this section. Fees must be deposited in the financial institutions regulatory fund.
- b. May require or permit any person to file a statement in writing, under oath, or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
 - c. May publish information concerning any violation of this chapter or any rule or order under this chapter.
 2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
 3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring the person to appear before the department there to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.
 4. A person is not excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of a person may tend to incriminate the person or subject the person to a penalty forfeiture. An individual may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
 5. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:
 - a. Criminal, civil, and administrative history information, including nonconviction data;
 - b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.]; and
 - c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.
 6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.
 7. Upon request, each licensee or person subject to this chapter shall make available to the commissioner the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books, records, and interviews of the officers, principals, mortgage loan originators, employees, independent

contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.

8. Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:
 - a. Accounting compilations;
 - b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
 - c. Other information deemed necessary to carry out the purposes of this section.
9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, a person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct its ordinary business affairs.
10. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
 - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
 - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
 - e. Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.
11. The authority of this section remains in effect, whether a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

13-12-19. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

13-12-20. Remedies not exclusive.

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

13-12-21. Penalty.

A person or company violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed one hundred thousand dollars for each occurrence and one thousand dollars per day for each day the violation continues after issuance of the order against any person or company who violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the department of financial institutions and deposited in the financial institutions regulatory fund.

13-12-22. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in the Secure and Fair Enforcement for Mortgage Licensing Act [Public Law 110-289, section 1512, 12 U.S.C. 5111, et seq.], the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

- b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to such information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

13-12-23. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

13-12-24. Call reports.

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition which must be in the form and must contain the information as the nationwide multistate licensing system and registry may require.

13-12-25. Report to nationwide multistate licensing system and registry.

Notwithstanding state privacy law, the commissioner regularly shall report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions contained in section 13-12-22.

13-12-26. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all residential mortgage lenders licensed under this chapter.

13-12-27. Notice to borrower regarding regulation by the department of financial institutions.

The written contract must contain the following notice in capital letters: NOTICE: RESIDENTIAL MORTGAGE LENDERS ARE LICENSED AND REGULATED BY THE NORTH DAKOTA DEPARTMENT OF FINANCIAL INSTITUTIONS. THE DEPARTMENT OF FINANCIAL INSTITUTIONS HAS NOT PASSED ON THE MERITS OF THE CONTRACT AND LICENSING DOES NOT CONSTITUTE AN APPROVAL OF THE TERMS OR OF THE LENDERS ABILITY TO ARRANGE ANY LOAN. COMPLAINTS REGARDING THE SERVICES OF RESIDENTIAL MORTGAGE LENDERS SHOULD BE DIRECTED TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

SECTION 13. REPEAL. Section 13-04.1-16 of the North Dakota Century Code is repealed.

SECTION 14. APPLICATION. Residential mortgage lenders holding a valid North Dakota money brokers license as of August 1, 2023, are not required to obtain a residential mortgage lenders license as required in section 13-12-03 until December 31, 2023. All other provisions of this chapter are applicable to residential mortgage lenders as of August 1, 2023.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2090.

Senate Vote: Yeas 43 Nays 0 Absent 4

House Vote: Yeas 79 Nays 6 Absent 9

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State