

TABLE OF CONTENTS

Kansas Loan Brokers Act

K.S.A. Section		PAGE
50-1001	Definitions.....	1
50-1002	Registration required.....	1
50-1003	Application for registration; contents; bond; issuance; effective date; consent to secretary of state as process agent.....	1
50-1004	Renewal of registration; fee.....	1
50-1005	Fees and funds; accounting and deposit in general fund.....	2
50-1006	Disclosure document to be provided by loan broker; when; contents; amendment of document; estimated disclosure documents and additional documents detailing specific loan information to be provided.....	2
50-1007	Contracts required to be in writing; retention of copy by borrowing party.....	3
50-1008	Denial, suspension or revocation of registration; orders and hearing.....	3
50-1009	Powers of securities commissioner; enforcement of subpoenas; privilege against self-incrimination; certificate of compliance or noncompliance, admissibility in evidence..	4
50-1010	Certified copies of documents or records admissible in actions or proceedings under act.....	5
50-1011	Violations; civil penalties, enforcement.....	5
50-1012	Same; liability of loan broker to damaged parties; rights of prospective borrower.....	5
50-1013	Violation of act or cease and desist order, penalties; prosecution; special prosecutor.....	5
50-1014	Recession of contract under Truth-in-Lending Act; notice to creditor; timely return of Consideration required; computation of time period for avoidance of contract.....	6
50-1015	Account numbers required to be assigned to agreements; loan brokers required to maintain certain records; period and manner maintenance.....	6
50-1016	Persons exempt from registration and other duties under act; burden of proof thereof.....	7
50-1017	Prohibited acts.....	7
50-1018	False or misleading filing or statement; penalty.....	7

50-1001. Definitions. As used in this act:

(a) "Commissioner" refers to the securities commissioner appointed under K.S.A. 75-6301, and amendments thereto.

(b) "Loan" means any agreement to advance money or property in return for the promise to make payments for the money or property.

(c) "Loan broker" means any person who, in return for a fee from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. Loan broker does not include:

(1) Any bank, savings bank, trust company, savings and loan association, credit union or any other financial institution regulated by any agency of the United States or any state;

(2) any person authorized to sell and service loans for the federal national mortgage association or the federal home loan mortgage corporation, issue securities backed by the government national mortgage association, make loans insured by the department of housing and urban development, make loans guaranteed by the veterans administration, or act as a correspondent of loans insured by the department of housing and urban development or guaranteed by the veterans administration;

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

(d) "Creditor" means any person to whom a loan is initially payable on the face of the note or contract evidencing the loan.

History: L. 1988, ch. 328, s 1; July 1.

50-1002. Registration required. It shall be unlawful for any person to engage in the business of loan brokering unless registered under this act.

History: L. 1988, ch. 328, s 2; July 1.

50-1003. Application for registration; contents; bond; issuance; effective date; consent to secretary of state as process agent. (a) In order to be registered under

this act a loan broker shall file an application for registration with the commissioner. The application for registration shall contain:

(1) The disclosure document required under subsection (b) of K.S.A. 50-1006, and amendments thereto, and the form of the disclosure statement proposed to be used under subsection (b)(1) of K.S.A. 50-1006, and amendments thereto;

(2) consent to service of process under subsection (e);

(3) evidence of the bond required in subsection (b); and

(4) a fee of \$250.

(b) A loan broker must maintain a bond satisfactory to the commissioner in the amount of \$25,000, which shall be in favor of the state.

(c) Whenever the provisions of this act have been complied with, the commissioner shall issue a certificate of registration to the applicant, authorizing the applicant to engage in the business of loan brokering.

(d) An application for registration becomes effective as of the date specified on the certificate of registration. Every registration is effective until January 1 of the year after it goes into effect.

(e) Every applicant for registration shall file with the commissioner, in such form as the commissioner prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant arising from the violation of any provision of this act. Service shall be made in accordance with article 3 of chapter 60 of the Kansas Statutes Annotated.

History: L. 1988, ch. 328, s 3; L. 1992, ch. 226, s 8; July 1.

50-1004. Renewal of registration; fee.

(a) A loan broker may not continue engaging in the business of loan brokering unless the broker's registration is renewed annually. A loan broker shall renew the registration by filing with the commissioner, at least 30 days before the expiration of the registration, an application containing any informa-

tion the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.

(b) An application for renewal must be accompanied by a fee of \$100.

History: L. 1988, ch. 328, s 4; July 1.

50-1005. Fees and funds; accounting and deposit in general fund. All fees and funds accruing from the administration of this act shall be accounted for by the commissioner and shall be deposited with the state treasurer who shall deposit them in the state general fund.

History: L. 1988, ch. 328, s 5; July 1.

50-1006. Disclosure document to be provided by loan broker; when; contents; amendment of document; estimated disclosure documents and additional documents detailing specific loan information to be provided. (a) At least seven days before the time any person signs a contract for the services of a loan broker, or seven days before the loan broker receives any consideration upon the contract, whichever occurs first, the loan broker must provide to the contracting person a written disclosure document that meets the requirements set forth in subsection (b).

(b) A written disclosure document shall contain the following information:

(1) A disclosure statement which shall be the cover sheet and shall be entitled in at least 10 point boldface capital letters "DISCLOSURES REQUIRED BY KANSAS LAW." Under this title shall appear the statement in at least 10 point type that "The Kansas securities commissioner has not reviewed and does not approve, recommend, endorse or sponsor any loan brokerage contract. The information contained in this disclosure has not been verified by the commissioner. If you have any questions see an attorney before you sign a contract or agreement." Nothing except the title and the required statement shall appear on the cover sheet;

(2) the name and form of organization of the broker, the names under which the broker has done, is doing, or intends to do business, and the name of any parent organization or affiliate of the broker;

(3) the names, addresses and titles of the broker's officers, directors, trustees, general partners, general managers, principal executives and any other person performing similar duties;

(4) the length of time the broker has conducted business as a loan broker;

(5) a full and detailed description of the actual services that the loan broker undertakes to perform for the prospective borrower;

(6) the number of loan brokerage contracts the broker has entered into within the past 12 months;

(7) the number of loan brokerage contracts in which the broker has successfully obtained a loan for the prospective borrower within the last 12 months and the dollar amount of the loans;

(8) financial statements for the loan broker's last fiscal year presented in accordance with generally accepted accounting principles, and reviewed by an independent accountant in accordance with standards established by the American institute of certified public accountants, except that for initial applications for registration, the financial statements shall include a balance sheet dated within four months of filing for registration;

(9) a specific statement of the circumstances under which the broker will be entitled to obtain or retain consideration from the party with whom the broker contracts; and

(10) any other information the commissioner may require.

(c) A loan broker shall amend the disclosure document required by subsection (b) whenever necessary to prevent it from containing any false or misleading statement of a material fact and shall deliver a copy of the amended disclosure document to the commissioner on or before the date of the amendment.

(d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure document if the creditor would be required to deliver to the person a disclosure document under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) for the transaction. The estimated disclosure document shall:

(1) Be delivered to the person before the person becomes contractually obligated on the loan; or

(2) be delivered or placed in the mail to the person not later than three business days after the person enters into an agreement with the loan broker whichever occurs first. The estimated disclosure document must contain all of the information and be in the form required by the Truth-in-Lending Act (15 U.S.C. 1601-1667e) and regulations under the act. However, the annual percentage rate, finance charge, total of payments and other matters required under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from an estimated disclosure document. The estimated disclosure document must state at the top in at least 10 point type: "The following is an estimated disclosure document showing your loan transaction as if the fees and charges you are scheduled to pay us were charged to you directly by the creditor." After the estimated disclosure document is delivered to any person, the loan broker shall deliver to the person an additional statement redisclosing all items if the actual annual percentage rate will vary from the annual percentage rate contained in the original estimated disclosure by more than 0.125%. Any required additional disclosure document shall be delivered or placed in the mail before consummation of the loan or after three days from when the information that requires redisclosure becomes available, whichever occurs first.

History: L. 1988, ch. 328, s 6; L. 1992, ch. 226, s 9; July 1.

50-1007. Contracts required to be in writing; retention of copy by borrowing party. To be enforceable, every contract for the services of a loan broker shall be in writing and signed by all contracting parties.

The borrowing party shall retain a copy of the signed contract at the time it is signed.

History: L. 1988, ch. 328, s 7; July 1.

50-1008. Denial, suspension or revocation of registration; orders and hearing.

(a) The commissioner may deny, suspend or revoke the registration of a loan broker if the loan broker:

(1) Fails to maintain the bond required under K.S.A. 50-1003;

(2) is insolvent;

(3) has violated any provision of this act;

(4) has filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact; or

(5) has been convicted, within 10 years before the date of the application, renewal or review, of any crime involving fraud or deceit.

(b) The commissioner may not enter a final order denying, suspending or revoking the registration of a loan broker without prior notice to all interested parties, opportunity for a hearing and written findings of fact and conclusions of law. The commissioner may by summary order deny, suspend or revoke a registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order and, that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested per-

sons and the hearing has been held, may modify or vacate the order or extend it until final determination.

History: L. 1988, ch. 328, s 8; July 1.

50-1009. Powers of securities commissioner; enforcement of subpoenas; privilege against self-incrimination; certificate of compliance or noncompliance, admissibility in evidence. (a) The commissioner may do the following:

(1) Adopt rules and regulations to implement this act;

(2) make investigations and examinations:

(A) In connection with any application for registration of any loan broker or any registration already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public;

(3) appoint special investigators to aid in investigations conducted pursuant to this act. Such special investigators shall have the same authority with respect to enforcement of this act as specified for special investigators appointed under subsection (b) of K.S.A. 17-1265, and amendments thereto, in enforcing the Kansas securities act;

(4) charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination;

(5) issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under paragraph (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this act. The commissioner shall notify the person that an order or notice has been issued, the reasons for it and that a hearing will be set in accordance with the provisions of the Kansas administrative procedures act after the com-

missioner receives a written request from the person requesting a hearing;

(6) sign all orders, official certifications, documents or papers issued under this act or delegate the authority to sign any of those items to a deputy;

(7) hold and conduct hearings;

(8) hear evidence;

(9) conduct inquiries with or without hearings;

(10) receive reports of investigators or other officers or employees of the state of Kansas or of any municipal corporation or governmental subdivision within the state;

(11) administer oaths or cause them to be administered;

(12) subpoena witnesses and compel them to attend and testify;

(13) compel the production of books, records and other documents; and

(14) order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(b) If any person refuses to obey a subpoena issued under this act, the commissioner may make application to any court of competent jurisdiction to order the person to appear before the commissioner and produce documentary evidence or give evidence as directed in the subpoena. The failure to obey the order of the court shall be subject to punishment by the court as contempt of court.

(c) No person shall be excused from complying with a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing which the individual is compelled to testify or produce evidence, after claiming the privilege against self-incrimination. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) In any prosecution, action, suit or proceeding based upon or arising out of this act, the commissioner may sign a certificate showing compliance or noncompliance with this act by any loan broker. This shall constitute prima facie evidence of compliance or noncompliance with this act and shall be admissible in evidence in any action at law or in equity to enforce this act.

History: L. 1988, ch. 328, s 9; L. 1992, ch. 226, s 10; July 1.

50-1010. Certified copies of documents or records admissible in actions or proceedings under act. Copies of any statement or document filed with the commissioner, and copies of any records of the commissioner, certified to by the commissioner are admissible in any prosecution, action, suit or proceeding based upon, or arising out of or under, the provisions of this act to the same effect as the original of the statement, document or record would be if actually produced.

History: L. 1988, ch. 328, s 10; July 1.

50-1011. Violations; civil penalties, enforcement. (a) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated this act, the commissioner may, in addition to all other remedies, impose a civil penalty upon the person in an amount not to exceed \$5,000 for each violation.

(b) The commissioner may bring an action in the district court of Shawnee county to enforce payment of any penalty imposed under this section.

History: L. 1988, ch. 328, s 11; July 1.

50-1012. Same; liability of loan broker to damaged parties; rights of prospective borrower. Any person who violates this act, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney fees. If a loan broker violates any provision of this act, in connection with a contract for loan

brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

History: L. 1988, ch. 328, s 12; July 1.

50-1013. Violation of act or cease and desist order, penalties; prosecution; special prosecutor. (a) Any person who willfully violates any provision of this act or knowingly violates any cease and desist order issued under this act commits a severity level 7, nonperson felony. Any violation of this act committed on or after July 1, 1993, resulting in a loss of \$25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

(b) Prosecution for any crime under this act must be commenced within five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(c) The commissioner may refer such evidence as may be available concerning violations of this act or of any rule and regulation or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the commissioner, such employee shall be appointed special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant

attorneys general or assistant county or district attorneys, and such other powers and duties as are lawfully delegated to such special prosecutors by the attorney general or the county attorney or district attorney.

History: L. 1988, ch. 328, s 13; L. 1992, ch. 226, s 11; L. 1993, ch. 291, s 227; July 1.

50-1014. Rescission of contract under Truth-in-Lending Act; notice to creditor; timely return of consideration required; computation of time period for avoidance of contract. (a) If a transaction for which a loan broker has charged any fee or collected any costs is rescinded by any person under the provisions of the Truth-in-Lending Act (15 U.S.C. 1601-1667e) within 20 calendar days after a notice of the rescission has been delivered to the creditor, the loan broker shall return to the person any money or property that has been given to the loan broker, including property or money the loan broker delivered or directed to third parties.

(b) For purposes of calculating the time period during which a person may avoid a contract under K.S.A. 50-640, and amendments thereto, a contract with a loan broker shall be considered to be a sale of services that occurs on the date the person receives the disclosure document required by subsection (d) of K.S.A. 50-1006.

History: L. 1988, ch. 328, s 14; July 1.

50-1015. Account numbers required to be assigned to agreements; loan brokers required to maintain certain records; period and manner of maintenance. (a) Each loan broker agreement shall be given an account number and all instruments taken in connection with that agreement must bear this number. Each loan broker shall keep and maintain the following records or their equivalent:

(1) A loan broker agreement register that consists of a chronological listing of all loan broker agreements that have been entered into. For each loan broker agreement the register shall contain the following:

- (A) The account number;
- (B) the date of the agreement;

(C) the name of the borrower or any proposed borrower;

(D) the amount of any fees charged; and

(E) the cost and type of any insurance required.

(2) A file for each borrower or proposed borrower shall contain the following:

(A) The name and address of the borrower or any proposed borrower;

(B) a copy of the signed loan broker agreement;

(C) a copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower, including a copy of the disclosure document required by subsection (d) of K.S.A. 50-1006 that contains an acknowledged receipt by the borrower or any proposed borrower;

(D) if a loan was obtained for the borrower, the name and address of the creditor;

(E) if a loan is accepted by the borrower, a copy of the loan agreement; and

(F) the amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(3) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(4) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within 30 days of the commissioner's request for the information.

(5) A copy of:

(A) All advertisements, pamphlets, circulars, letters, articles or communications published in any newspaper, magazine or periodical;

(B) scripts of any recording, radio or television announcement; and

(C) any sales kits or literature to be used in solicitation of borrowers.

(b) The records listed in subsection (a) shall be kept for a period of six years in the loan broker's principal office and must be separate or readily identifiable from the re-

cords of any other business that is conducted in the office of the loan broker.

History: L. 1988, ch. 328, s 15; July 1.

50-1016. Persons exempt from registration and other duties under act; burden of proof thereof. (a) The following persons are exempt from the requirements of K.S.A. 50-1002, 50-1003, 50-1004, 50-1006, 50-1007, 50-1008, 50-1014 and 50-1015:

(1) Any attorney while engaging in the practice of law;

(2) any certified public accountant with a permit to practice under K.S.A. 1-310, and amendments thereto, while engaged in practice as a certified public accountant or any independent public accountant engaged in the practice of public accounting whose service in relation to procurement of a loan is incidental to their practice;

(3) any person licensed as a real estate broker or salesperson under K.S.A. 58-3039, and amendments thereto, while rendering services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required;

(4) any broker-dealer, agent or investment advisor registered under K.S.A. 17-1254, and amendments thereto;

(5) any person whose fee is wholly contingent on the successful procurement of a loan from a third party and to whom no fee, other than a bona fide third party fee, is paid before the procurement;

(6) any person who is a creditor, or proposed to be a creditor, for any loan; and

(7) any feedlot operator licensed under K.S.A. 47-1503, and amendments thereto.

(b) As used in this section, "bona fide third party fee" includes fees for:

(1) Credit reports, appraisals and investigations; and

(2) if the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey and similar purposes.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance

money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this act shall be on the party claiming the exemption or classification.

History: L. 1988, ch. 328, s 16; July 1.

50-1017. Prohibited acts. A loan broker shall not, in connection with an offer of or a contract for the services of a loan broker, either directly or indirectly, do any of the following:

(1) Employ any device, scheme or artifice to defraud;

(2) make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading; or

(3) engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person.

History: L. 1988, ch. 328, s 17; L. 1992, ch. 226, s 12; July 1.

50-1018. False or misleading filing or statement; penalty. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: L. 1992, ch. 226, s 7; July 1.