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Manufactured Home Loans in the Kansas Mortgage Business Act and K.S.A. 16-207-Purpose

Upon passage of 2024 Senate Substitute for 2023 HB2247 into law effective January 1, 2025, the Office of the State Bank Commissioner (OSBC) releases this guidance document to clarify the OSBC's policy on the treatment of consumer credit transactions secured by manufactured homes, occupied by the owner(s) for residential purposes, and regarding certain repealed statutes under the Kansas Uniform Consumer Credit Code (UCCC). Effective January 1, 2025, the financing for manufactured homes is governed by the Kansas Mortgage Business Act (KMBA) at K.S.A. 9-2201 *et seq.* and the Contracts and Promises statutes at K.S.A. 16-207.

Consumer Loans and Consumer Credit Sales for Manufactured Homes Removed from the UCCC

The UCCC statutes governing financing for consumer credit transactions secured by real estate, mortgages, and manufactured homes have been removed from the UCCC. The KMBA and/or K.S.A. 16-207 now govern these transactions by default. Lenders in a credit transaction secured by a manufactured home may still "opt into" the UCCC by agreement with the borrowers.¹ However, lenders may choose not to "opt in" due to the UCCC's prepaid finance charge limitations. The KMBA and K.S.A. 16-207 permit higher prepaid finance charges in manufactured home loans.

Loans Secured by Manufactured Homes Incorporated in the KMBA and K.S.A. 16-207

The KMBA defines a "mortgage loan."² 15 U.S.C. 1602 further defines a "dwelling" as a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. For purposes of the KMBA, a manufactured home would qualify as a residential structure or mobile home. The OSBC recognizes that construction standards differ between

¹ See K.S.A. 16a-1-109.

² See K.S.A. 9-2201(z).

mobile homes and manufactured homes, but both may be primary dwellings and are treated the same. Certain loans secured by a manufactured home, including chattel loans, are governed by the KMBA.³

Subordinate Lien Mortgage Loans, Including Subordinate Lien Chattel Loans

A mortgage loan secured by either a subordinate lien mortgage or subordinate lien security interest in a manufactured home, is a covered transaction.⁴ K.S.A. 9-2228(a) places an 18% per annum periodic finance charge limit on covered transactions. K.S.A. 9-2228(d) limits prepaid finance charges up to 8% of the amount financed, provided aggregate prepaid finance charges payable to the lender or related persons do not exceed 5% of the amount financed.⁵ For instances of refinancing, K.S.A. 9-2228(f) permits a prepaid finance charge of not more than 5% of the additional amount financed of a covered transaction if within 12 months after the original loan a mortgage company refinances such covered transaction.⁶ For these types of subordinate mortgage loans, K.S.A. 9-2230 allows the imposition of late fees when appropriate. K.S.A. 9-2229(a) allows additional charges to include some closing costs, late fees, charges for other benefits and certain service charges.⁷

First Lien Mortgage Loans, High Loan-to-Value Ratio, Not Government-Guaranteed

A loan secured by a first mortgage or equivalent security interest in real estate, including a manufactured home attached to real estate, with a loan-to-value (LTV) ratio greater than 100% and not guaranteed by a government program is a covered transaction.⁸ K.S.A. 16-207(a) limits interest receivable to 15% per annum for such loans, while the prepaid finance charges remain limited by K.S.A. 9-2228(d) in addition to the periodic finance charges.⁹ For instances of refinancing, K.S.A. 9-2228(f) permits a prepaid finance charge of not more than 5% of the additional amount financed of a covered transaction if within 12 months after the original loan a mortgage company refinances such covered transaction.¹⁰ For these types of first mortgage loans, K.S.A. 9-2230 allows the imposition of late fees when appropriate. K.S.A. 9-2229(a) allows additional charges to include some closing costs, late fees, charges for other benefits and certain service charges.

³ Transactions referred to as “chattel loans” are only secured by the manufactured home and not the underlying land.

Contrary to typical residential real estate loans, chattel loan security instruments are not recorded at the applicable county register of deeds.

⁴ See K.S.A. 9-2201(m).

⁵ See K.S.A. 9-2228(d).

⁶ See K.S.A. 9-2228(f) and (g).

⁷ See K.S.A. 9-2229(a).

⁸ See K.S.A. 9-2201(m).

⁹ See K.S.A. 9-2228(b).

¹⁰ See K.S.A. 9-2228(f) and (g).

First Lien Mortgage Loans, Loan-to-Value Ratio of 100% or Less, and First Lien Chattel Loans

A loan secured by a first mortgage or equivalent security interest in a dwelling either attached or not attached to real estate with an LTV ratio less than or equal to 100% is not a covered transaction.¹¹ Further, chattel loans are not appraised as real estate; thus, calculating an LTV ratio for a chattel loan is not applicable under current law. Therefore, K.S.A. 16-207(a) governs the interest receivable allowed for such loans, including chattel loans, limiting interest charges to 15% per annum. The prepaid finance charges for such loans are included in the applicable annual percentage rate (APR) as defined by K.S.A. 9-2201(m) and federal law since no specific state statute is on point. Furthermore, K.S.A. 16-207(b) restricts prepayment penalties beyond six months from the loan date. Finally, K.S.A. 16-207(c) allows for collecting actual government filing fees, closing costs, and reasonable expenses, including late fees, when appropriate.

Disclaimer to Readers to Independently Review Relevant Law

This guidance document discusses the basic features of typical loans and is not intended to cover every variation in manufactured home loans. For example, certain manufactured home loans are covered transactions, as applied by K.S.A. 9-2231, where the APR exceeds the code mortgage rate.¹² The OSBC encourages each manufactured home lender to thoroughly review the Kansas Mortgage Business Act, K.S.A. 16-207 *et seq.*, and applicable state and federal laws to assess the compliance of specific business models. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify, or retract its interpretation at any time. Issued December 17, 2024; Effective January 2, 2025.

¹¹ See K.S.A. 9-2201(m) and (z).

¹² Applying the loan-to-value ratio calculation to chattel loans is impractical, as there is no real estate appraised. Thus, chattel loans are covered transactions only when the APR exceeds the code mortgage rate, currently 12%, for purposes of applying K.S.A. 9-2231.