

KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 22 – MORTGAGE BUSINESS

(K.S.A. 9-2201 through 9-2234)

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(K.S.A. 9-2201 through 9-2234)

K.S.A. 9-2201. Definitions.

As used in this act:

- (a) “Act” means the Kansas mortgage business act.
- (b) “Amount financed” means the net amount of credit provided to the consumer or on the consumer’s behalf. The amount financed shall be calculated as provided in rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2209, and amendments thereto.
- (c) “Annual percentage rate” shall have the same meaning, be interpreted in the same manner and be calculated using the same methodology as prescribed by 15 U.S.C. 1606.
- (d) “Applicant” means a person who has submitted an application for a license to engage in mortgage business or a person who has submitted an application for registration to conduct mortgage business in this state as a loan originator.
- (e) “Appraised value” means, with respect to any real estate at any time:
 - (1) The total appraised value of the real estate, as reflected in the most recent records of the tax assessor of the county in which the real estate is located;
 - (2) the fair market value of the real estate, as reflected in a written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months; or
 - (3) in the case of a nonpurchase-money real estate transaction, the estimated market value as determined through a method acceptable to the commissioner. In determining the acceptability of the method, the commissioner shall consider the reliability and impartiality of the method under the circumstances. The commissioner may consider industry standards or customs. A method shall not be acceptable if the resulting value is predetermined or when the fee to be paid to the method provider is contingent upon the property valuation reached or upon the consequences resulting from the property valuation reached.

- (f) “Balloon payment” means any required payment that is more than twice as large as the average of all earlier scheduled payments.
- (g) “Branch office” means a place of business, other than a principal place of business, where the mortgage company maintains a physical location for the purpose of conducting mortgage business with the public.
- (h) “Closed-end covered transaction” means the same as in 12 C.F.R 1026.2(a)(10).
- (i) “Closing costs” means:
 - (1) The actual fees paid to a public official or agency of the state or federal government for filing, recording or releasing any instrument related to the debt; and
 - (2) bona fide and reasonable expenses incurred by the mortgage company in connection with the making, closing, disbursing, extending, readjusting or renewing the debt that are payable to third parties not related to the mortgage company. Reasonable fees for an appraisal made by the mortgage company or related party are permissible.
- (j) (1) “Code mortgage rate” means the greater of:
 - (A) 12%; or
 - (B) the sum of:
 - (i) The required net yield published by the federal national mortgage association for 60-day mandatory delivery whole loan commitments for 30 year fixed-rate mortgages with actual remittance on the first day for which required net yield was published in the previous month; and
 - (ii) 5%
- (2) If the reference rate referred to in clause (j)(1)(B)(i)* is discontinued, becomes impractical to use, or is otherwise not readily ascertainable for any reason, the commissioner may designate a comparable replacement reference rate and, upon publishing notice of the same, such replacement reference rate shall become the reference rate referred to in clause (j)(1)(B)(i)*. The secretary of state shall publish notice of the code mortgage rate not later than the second issue of the Kansas register published each month.
- (k) “Commissioner” means the state bank commissioner or designee, who shall be the deputy commissioner of the consumer and mortgage lending division of the office of the state bank commissioner.

- (l) "Consumer" means an individual to whom credit is offered or granted under this act.
- (m) "Covered transaction" means a mortgage loan that:
 - (1) Is a subordinate mortgage;
 - (2) Has a loan-to value ratio at the time when made that exceeds 100%, except for any loan guaranteed by a federal government agency of the United States; or
 - (3) in the case of K.S.A. 9-2231, and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate.
- (n) "Finance charge" means all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the mortgage company as an incident to or as a condition of the extension of credit. The finance charge shall be calculated as provided in rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2209, and amendments thereto.
- (o) "Individual" means a human being.
- (p) "Insufficient payment method" means any instrument as defined in K.S.A. 84-3-104, and amendments thereto, drawn on any financial institution for the payment of money and delivered in payment, in whole or in part, of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the instrument upon presentation.
- (q) "Installment" means a periodic payment required or permitted by agreement in connection with a covered transaction.
- (r) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.
- (s) "Licensed mortgage company" means a mortgage company that has been licensed as required by this act.
- (t) "Licensee" means a person who is licensed by the commissioner as a mortgage company.
- (u) "Loan originator" means an individual:
 - (1) Who engages in mortgage business on behalf of a single mortgage company;
 - (2) whose conduct of mortgage business is the responsibility of the licensee;

- (3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and
 - (4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of mortgage loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.
- (v) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.
- (1) For purposes of this subsection, the term “clerical or support duties” may include subsequent to the receipt of a mortgage loan application:
 - (A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 - (B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.
 - (2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.
- (w) "Loan-to-value ratio" means a fraction expressed as a percentage at any time:
- (1) The numerator of which is the aggregate unpaid principal balance of all loans secured by a mortgage; and
 - (2) The denominator of which is the appraised value of the real estate.
- (x) “Mortgage business” means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, arranging for others, or holding the rights to or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.
- (y) “Mortgage company” means a person engaged in mortgage business.

- (z) “Mortgage loan” means a loan or agreement to extend credit made to one or more persons which is secured by a first or subordinate mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, except as provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.
- (aa) “Mortgage loan application” means the submission of a consumer’s financial information, including, but not limited to, the consumer’s name, income and social security number, to obtain a credit report, the property address, an estimate of the value of the property and the mortgage loan amount sought for the purpose of obtaining an extension of credit.
- (bb) “Mortgage servicer” means any person engaged in mortgage servicing.
- (cc) “Mortgage servicing” means collecting payment, remitting payment for another or the right to collect or remit payment of any of the following: Principal; interest; tax; insurance; or other payment under a mortgage loan.
- (dd) “Nationwide mortgage licensing system and registry” means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.
- (ee) “Not-for-profit” means a business entity that is granted tax exempt status by the internal revenue service.
- (ff) "Open-end covered transaction" means a covered transaction in which a mortgage company:
 - (1) Reasonably contemplates repeated transactions;
 - (2) may impose a finance charge from time to time on an outstanding unpaid balance; and
 - (3) extends an amount of credit to the consumer during the term of the mortgage loan, up to any set limit, that is generally made available to the extent that any outstanding balance is repaid.
- (gg) “Person” means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.
- (hh) "Prepaid finance charge" means any finance charge paid separately before or at consummation of a transaction or withheld from the proceeds of the credit at any time.

- (ii) "Principal" of a mortgage loan means the total of the amount financed and the prepaid finance charges, except that prepaid finance charges are not added to the amount financed to the extent such prepaid finance charges are paid separately by the consumer.
- (jj) "Primary market" means the market wherein mortgage business is conducted including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction.
- (kk) "Principal place of business" means a place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.
- (ll) "Promotional items" means pens, pencils, hats and other such novelty items.
- (mm) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator on behalf of a licensed mortgage company.
- (nn) "Related" with respect to a person means:
 - (1) A person directly or indirectly controlling, controlled by or under common control of another person;
 - (2) an officer or director employed by the person performing similar functions with another person;
 - (3) a relative by blood, adoption or marriage of a person within the fourth degree of relationship; or
 - (4) an individual who shares the same home with such person.
- (oo) "Remote location" means a location other than the principal place of business or a branch office where a licensed mortgage company's employee or independent contractor is authorized by such company to engage in mortgage business. A remote location is not considered a branch office.
- (pp) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

History: L. 1996, ch. 175, § 1; L. 1999, ch. 45, § 1; L. 2001, ch. 88, § 2; L. 2001, ch. 166, § 1; L. 2009, ch. 29, § 4; L. 2015, ch. 33, § 7; L. 2016, ch. 15, § 1; L. 2022, ch. 30, § 1; L. 2024, ch. 15, § 16; L. 2024, ch. 100, § 1; January 1, 2025.

K.S.A. 9-2202. Organizations, entities and individuals exempt from licensure.

The following are exempt from the licensing requirements of this act:

- (a) Any bank, savings bank, trust company, savings and loan association, building and loan association, industrial loan company or credit union organized, chartered or authorized under the laws of the United States or of any state which is authorized to make loans and to receive deposits;
- (b) any entity directly or indirectly regulated by an agency of the United States or of any state which is a subsidiary of any entity listed in subsection (a) if 25% or more of such entity's common stock is directly owned by any entity listed in subsection (a);
- (c) the United States of America, the state of Kansas, any other state or any agency or instrumentality of any governmental entity;
- (d) any individual who with their own funds for their own investment makes a purchase money mortgage or finances the sale of their own property, except that any individual who enters into more than five such investments or sales in any twelve-month period shall be subject to all provisions of this act;
- (e) not-for-profit entities that provide mortgage loans in conjunction with a mission of building or rehabilitating affordable homes to low-income consumers; and
- (f) business entities with no employees when a related, licensed mortgage company acts as a proxy for the entity by conducting all mortgage business on behalf of the entity and by including all such mortgage business in the proxy's reports to the commissioner, but the entity and the proxy are jointly and severally liable for violations of this act by the proxy.

History: L. 1996, ch. 175, § 2; L. 1999, ch. 45, § 2; L. 2001, ch. 88, § 3; L. 2009, ch. 29, § 5; L. 2016, ch. 15, § 2; L. 2024, ch. 6, § 18; January 1, 2025.

K.S.A. 9-2203. License required to conduct mortgage business; mortgage business at remote locations, requirements; registration required for a loan originator; penalty; statute of limitations for prosecution.

- (a) Mortgage business shall only be conducted in this state by entities that are exempt from licensure pursuant to K.S.A. 9-2202, and amendments thereto, or a licensed mortgage company. A licensee shall be responsible for all mortgage business conducted on such licensee's behalf by any person, including loan originators, employees or independent contractors.
- (b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as

required by this act and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry, if operational at the time of registration.

- (c) A registrant shall only engage in mortgage business on behalf of one licensed mortgage company.
- (d) Mortgage business may be conducted at a remote location, if:
 - (1) The licensed mortgage company's employees or independent contractors do not meet with the public at a personal residence.
 - (2) no physical business records are maintained at the remote location;
 - (3) the licensed mortgage company has written policies and procedures for working at a remote location and such company supervises and enforces such policies and procedures;
 - (4) the licensed mortgage company maintains the computer system and customer information in accordance with the company's information technology security plan and all state and federal laws;
 - (5) any device used to engage in mortgage business has appropriate security, encryption and device management controls to ensure the security and confidentiality of customer information as required by rules and regulations adopted by the commissioner;
 - (6) the licensed mortgage company's employees or independent contractors take reasonable precautions to protect confidential information in accordance with state and federal laws; and
 - (7) the licensed mortgage company annually reviews and certifies that the employees or independent contractors engaged in mortgage business at remote locations meet the requirements of this section. Upon request, a licensee shall provide written documentation of such licensee's review to the commissioner.
- (e) Nothing under this act shall require a licensee to obtain any other license under any other act for the sole purpose of conducting non-depository mortgage business.
- (f) Any person who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.
- (g) No prosecution for any crime under this act may be commenced more than 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, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

- (h) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

History: L. 1996, ch. 175, § 3; L. 1999, ch. 45, § 3; L. 2001, ch. 88, § 4; L. 2005, ch. 144, § 1; L. 2009, ch. 29, § 6; L. 2016, ch. 15, § 3; L. 2017, ch. 52, § 8; L. 2022, ch. 30, § 2; L. 2024, ch. 6, § 19; January 1, 2025.

K.S.A. 9-2204. Application for license for mortgage company; application for registration for loan originator; content; incomplete application.

- (a) Any person required to be licensed as a mortgage company pursuant to this act shall submit to the commissioner an application for the mortgage company on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify:
 - (1) The nature of the mortgage business to be conducted, principal place of business address and each branch office address;
 - (2) the identity, character and qualifications of an individual applicant;
 - (3) the identity, character and qualifications of the loan originators, owners, officers, directors, members, partners and employees of the applicant;
 - (4) the name under which the applicant intends to conduct business; and
 - (5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant and compliance with the provisions of this act.
- (b) Any individual required to register as a loan originator pursuant to this act shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify the location where the individual engages in mortgage business activities, the licensee for whom the registrant will conduct mortgage business and other information the commissioner requires to evaluate the condition, character, qualifications, and fitness of the applicant and compliance with the provisions of this act.
- (c) Each application shall be accompanied by a nonrefundable fee of not less than \$50, which may be increased by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

- (d) The commissioner shall consider an application for a license or registration abandoned if the applicant fails to complete the application within 60 days after the commissioner provides the applicant with written notice of the incomplete application. An applicant whose application is abandoned under this section may reapply to obtain a license or registration and shall pay the fee set forth in subsection (c) upon such application.
- (e) An application shall be approved, and a nonassignable license or registration shall be issued to the applicant if:
 - (1) The commissioner has received the complete application and fee required by this section;
 - (2) the commissioner determines the proposed name under which an applicant for a mortgage company license intends to conduct business is not misleading or otherwise deceptive; and
 - (3) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

History: L. 1996, ch. 175, § 4; L. 1999, ch. 45, § 4; L. 2000, ch. 17, § 1; L. 2001, ch. 88, § 5; L. 2017, ch. 52, § 9; L. 2022, ch. 30, § 3; July 1.

K.S.A. 9-2205. License or registration; renewal; fees, late fees; uses.

- (a) A license or registration shall become effective as of the date specified in writing by the commissioner.
- (b) Each license and registration shall expire on December 31 of each year. A license or registration shall be renewed by filing with the commissioner a complete renewal application and nonrefundable renewal fee by December 1 of each year.
- (c) A registration shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the registration, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original registration application or prior renewal applications, including the completion of any continuing education requirements. Renewal applications received after December 1 of each year and incomplete renewal applications as of December 1 of each year may be assessed a late fee.
- (d) An expired license or registration may be reinstated through the last day of February of each year, with the same force and effect as if the license or registration had not expired and had at all times remained in full force and effect, by filing a reinstatement application and paying the appropriate application and late fees.

- (e) Any renewal or reinstatement application received by the commissioner after the last day of February of each year shall be treated as an original application and shall be subject to all reporting and fee requirements contained in K.S.A. 9-2204, and amendments thereto.
- (f) the commissioner may designate late fees paid under this section for consumer education to be expended for such purpose as directed by the commissioner.

History: L. 1996, ch. 175, § 5; L. 1999, ch. 45, § 5; L. 2001, ch. 88, § 6; L. 2005, ch. 144, § 2; L. 2009, ch. 29, § 7; L. 2016, ch. 15, § 4; L. 2022, ch. 30, § 4; July 1.

K.S.A. 9-2206. Application denied; application abandoned; appeal.

- (a) If the commissioner fails to issue a license or registration within 60 days or grant a renewal within 30 days after an application is deemed complete by the commissioner, the applicant may make written request for a hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.
- (b) If an application is considered abandoned pursuant to K.S.A. 9-2204, and amendments thereto, an applicant may make written request for a hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

History: L. 1996, ch. 175, § 6; L. 1999, ch. 45, § 6; L. 2001, ch. 88, § 7; L. 2016, ch. 15, § 5; L. 2017, ch. 52, § 10; July 1.

K.S.A. 9-2207. Denial, suspension or revocation of license or registration; notice; disciplinary proceedings.

- (a) The commissioner may deny, suspend, revoke, or refuse to renew a license or registration issued pursuant to this act, if the commissioner finds, after notice and opportunity for a hearing conducted in accordance with the provisions of the administrative procedures act, that:
 - (1) The applicant, licensee or registrant has repeatedly or willfully violated any section of this act or any rule and regulation or order lawfully made pursuant to this act;
 - (2) facts or conditions exist which would have justified the denial of the license, registration or renewal had these facts or conditions existed or been known to exist at the time the application for the license, registration or renewal was made;
 - (3) the applicant, licensee or registrant has filed with the commissioner any document or statement containing any false representation of a material fact or fails to state a material fact;

- (4) the applicant, licensee or registrant has been convicted of any crime involving fraud, dishonesty or deceit, except that no registration shall be granted to any loan originator who:
 - (A) Has had a mortgage loan originator license or registration revoked in any governmental jurisdiction; or
 - (B) has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:
 - (i) During the seven-year period preceding the date of the application for licensing and registration; or
 - (ii) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, deceit, a breach of trust or money laundering;
 - (5) the applicant, licensee or registrant has engaged in or is engaging in deceptive business practices;
 - (6) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant, has been the subject of any disciplinary action by this agency or any other state or federal regulatory agency;
 - (7) a final judgment has been entered against the applicant, licensee or registrant in a civil action and the commissioner finds, based upon the conduct on which the judgment is based, that licensing or registration of such person would be contrary to the public interest;
 - (8) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant has been convicted of engaging in mortgage business activity without authorization pursuant to K.S.A. 9-2203, and amendments thereto, or a substantially similar offense in another state; or
 - (9) the applicant, licensee or registrant has refused to furnish information required by the commissioner within a reasonable period of time as established by the commissioner.
- (b) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license or registration to render a decision suspending, revoking or refusing to renew such license or registration or to establish and make a record of the facts of any violation of law for any lawful purpose:
- (1) The imposition of an administrative penalty;

- (2) the lapse or suspension of any license or registration issued under this act by operation of law;
- (3) the licensee's or registrant's failure to renew any license or registration issued under this act; or
- (4) the licensee's or registrant's voluntary surrender of any license or registration issued under this act.

History: L. 1996, ch. 175, § 7; L. 1999, ch. 45, § 7; L. 2000, ch. 17, § 2; L. 2001, ch. 88, § 8; L. 2009, ch. 29, § 8; July 1.

K.S.A. 9-2208. Availability of evidence of licensure; providing notice of certain information to consumer; contents; advertising or solicitation disclosures.

- (a) Each licensee shall make available evidence of licensure in a way that reasonably assures recognition by consumers and members of the general public.
- (b) The licensee shall provide each consumer a notice, containing such information as the commissioner may prescribe by rules and regulations, before the earliest of the following, as applicable:
 - (1) The time of entering into any contract with a consumer for the provision of services for a mortgage loan;
 - (2) the time of receiving any compensation or promise of compensation from or on behalf of a consumer for a mortgage loan; or
 - (3) 15 days after accepting a transfer of mortgage servicing.
- (c) All solicitations and published advertisements concerning mortgage business directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number or unique identifier of the licensee on record with the commissioner. Each licensee shall maintain a record of all solicitations or advertisements for a period of 36 months. For the purpose of this subsection, "advertising" does not include business cards or promotional items.
- (d) No solicitation or advertisement shall contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas.
- (e) No licensee or registrant shall conduct mortgage business in this state using any name other than the name or names stated on their license or registration.

History: L. 1996, ch. 175, § 8; L. 1999, ch. 45, § 8; L. 2000, ch. 17, § 3; L. 2001, ch. 88, § 9; L. 2005, ch. 144, § 3; L. 2016, ch. 15, § 6; L. 2022, ch. 30, § 5; L. 2024, ch. 6, § 20; January 1, 2025.

K.S.A. 9-2209. Powers and duties of state bank commissioner; orders to appear before commissioner; other remedies available to consumers.

- (a) The commissioner may exercise the following powers:
- (1) Adopt rules and regulations as necessary to carry out the intent and purpose of this act and to implement the requirements of applicable federal law;
 - (2) make investigations and examinations of the licensee's or registrant's operations, books and records as the commissioner deems necessary for the protection of the public and control access to any documents and records of the licensee or registrant under examination or investigation;
 - (3) charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant, licensee or registrant. The commissioner shall establish such fees in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. Charges for administration of this act shall be based on the licensee's loan volume;
 - (4) order any licensee or registrant to cease any activity or practice that the commissioner deems to be deceptive, dishonest, violative of state or federal law or unduly harmful to the interests of the public;
 - (5) exchange any information regarding the administration of this act with any agency of the United States or any state that regulates the licensee or registrant or administers statutes, rules and regulations or programs related to mortgage business and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies that are deemed necessary or beneficial to the administration of this act;
 - (6) disclose to any person or entity that an applicant's, licensee's or registrant's application, license or registration has been denied, suspended, revoked or refused renewal;
 - (7) require or permit any person to file a written statement, under oath or otherwise as the commissioner may direct, setting forth all the facts and circumstances concerning any apparent violation of this act, or any rule and regulation promulgated thereunder or any order issued pursuant to this act;

- (8) receive, as a condition in settlement of any investigation or examination, a payment designated for consumer education to be expended for such purpose as directed by the commissioner;
- (9) require that any applicant, registrant, licensee or other person successfully passes a standardized examination designed to establish such person's knowledge of mortgage business transactions and all applicable state and federal law. Such examinations shall be created and administered by the commissioner or the commissioner's designee, and may be made a condition of application approval or application renewal;
- (10) require that any applicant, licensee, registrant or other person complete a minimum number of pre-licensing education hours and complete continuing education hours on an annual basis. Pre-licensing and continuing education courses shall be approved by the commissioner, or the commissioner's designee, and may be made a condition of application approval and renewal;
- (11) require fingerprinting of any applicant, registrant, licensee in accordance with K.S.A. 22-4714 2024 Supp., and amendments thereto. For the purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;
- (12) refer such evidence as may be available concerning any violation of this act or of any rule and regulation or order hereunder to the attorney general, or in consultation with the attorney general to the proper county or district attorney, who may in such prosecutor's discretion, with or without such a referral, institute the appropriate criminal proceedings under the laws of this state;
- (13) issue and apply to enforce subpoenas in this state at the request of a comparable official of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Kansas mortgage business act if the activities had occurred in this state;
- (14) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding loan originator registration or mortgage company licensing to and from any source so directed by the commissioner;
- (15) establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, registrants or other persons subject to this act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The

commissioner shall regularly report enforcement actions and other relevant information to the nationwide mortgage licensing system and registry;

- (16) require any licensee or registrant to file reports with the nationwide mortgage licensing system and registry in the form prescribed by the commissioner or the commissioner's designee;
 - (17) receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of the Kansas mortgage business act or commence proceedings on the commissioner's own initiative;
 - (18) provide guidance to persons and groups on their rights and duties under the Kansas mortgage business act;
 - (19) enter into any informal agreement with any mortgage company for a plan of action to address violations of law. The adoption of an informal agreement authorized by this paragraph shall not be subject to the provisions of K.S.A. 77-501 *et seq.*, and amendments thereto, or K.S.A. 77-601 *et seq.*, and amendments thereto. Any informal agreement authorized by this paragraph shall not be considered an order or other agency action, and shall be considered confidential examination material pursuant to K.S.A. 9-2217, and amendments thereto. All such examination material shall also be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 *et seq.*, and amendments thereto, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; and
 - (20) issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the rules and regulations filing act.
- (b) For the purpose of any examination, investigation or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter that is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.
- (c) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

- (d) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- (e) Except for refund of an excess charge, no liability is imposed under the Kansas mortgage business act for an act done or omitted in conformity with a rule and regulation or written administrative guidance document of the commissioner in effect at the time of the act or omission, notwithstanding that after the act or omission, the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.
- (f) The grant of powers to the commissioner in this article does not affect remedies available to consumers under K.S.A. 9-2201 *et seq.*, and amendments thereto, or under other principals of law or equity.

History: L. 1996, ch. 175, § 9; L. 1999, ch. 45, § 9; L. 2000, ch. 17, § 4; L. 2001, ch. 88, § 10; L. 2005, ch. 144, § 4; L. 2009, ch. 29, § 9; L. 2016, ch. 15, § 7; L. 2017, ch. 81, § 4; L. 2021, ch. 82, § 3; L. 2024, ch. 15, § 17; L. 2024, ch. 100, § 2; January 1, 2025.

K.S.A. 9-2210. Fees; disposition.

All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308, and amendments thereto.

History: L. 1996, ch. 175, § 10; April 25.

K.S.A. 9-2211. Bonding requirements; positive net worth requirements.

- (a) Each applicant or licensee shall file with the commissioner a surety bond in the amount of not less than \$100,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the following requirements:
 - (1) The bond shall be payable to the office of the state bank commissioner and shall be in an amount established by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto;

- (2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner, except that such termination shall not affect the surety's liability for violations of the Kansas mortgage business act occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of principal that gives rise to a claim under the bond; and
 - (3) the bond shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages that are determined by the commissioner to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the requirements of this act.
- (b) Each applicant or licensee shall submit evidence that establishes, to the commissioner's satisfaction, that the applicant or licensee is solvent and shall at all times maintain a positive net worth. Evidence of solvency and net worth shall include the submission of a balance sheet of the applicant or a consolidated financial statement of the entity that owns or controls the applicant.

History: L. 1999, ch. 45, § 10; L. 2001, ch. 88, § 11; L. 2005, ch. 144, § 5; L. 2009, ch. 29, § 10; L. 2016, ch. 15, § 8; L. 2017, ch. 52, § 11; L. 2022, ch. 30, § 6; July 1.

K.S.A. 9-2212. Prohibited acts for persons licensed or registered under act.

No person required to be licensed or registered under this act shall directly or indirectly:

- (a) Pay compensation to, contract with or employ in any manner, any person engaged in mortgage business who is not properly licensed or registered, unless such person is exempt pursuant to K.S.A. 9-2202, and amendments thereto;
- (b) without the prior written approval of the commissioner employ any person who has:
 - (1) Had a license or registration denied, revoked, suspended or refused renewal; or
 - (2) been convicted of any crime involving fraud, dishonesty or deceit;
- (c) delay closing of a mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;
- (d) misrepresent the material facts or make false promises intended to influence, persuade or induce an applicant for a mortgage loan or mortgagee to take a mortgage loan or cause or contribute to misrepresentation by any person acting on behalf of the person required to be licensed or registered;

- (e) misrepresent to or conceal from an applicant for a mortgage loan a mortgagor or a lender, material facts, terms or conditions of a transaction to which the person required to be licensed or registered is a party;
- (f) engage in any transaction, practice or business conduct that is not in good faith, or that operates a fraud upon any person in connection with conducting mortgage business;
- (g) receive compensation for rendering mortgage business services where the licensee or registrant has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage transaction unless the person required to be licensed or registered has provided written disclosure to the person from whom compensation is collected that the person is receiving compensation both for mortgage business services and for real estate broker or agent services;
- (h) engage in any fraudulent residential mortgage brokerage or underwriting practices;
- (i) advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner, any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for a mortgage loan;
- (j) fail to disburse the proceeds of a mortgage loan upon the satisfaction of all conditions to the disbursement and the expiration of all applicable rescission, cooling-off or other waiting periods required by law, unless the parties otherwise agree in writing;
- (k) record a mortgage if moneys are not available for the immediate disbursal to the mortgagor unless, before that recording, the person required to be licensed or registered informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay;
- (l) transfer, assign or attempt to transfer or assign, a license or registration to any other person, or assist or aid and abet any person who does not hold a valid license or registration under this act in engaging in the conduct of mortgage business who is not properly licensed or registered, unless such person is exempt under K.S.A. 9-2202, and amendments thereto;
- (m) solicit or enter into a contract with a borrower that provides in substance that the person required to be licensed or registered may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;
- (n) 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;
- (o) make any payment, threat or promise, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat or promise, 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 or engage in any activity that would constitute a violation of K.S.A. 58-2344, and amendments thereto; or

- (p) fail to comply with this act or rules and regulations promulgated under this act 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 act.

History: L. 1999, ch. 45, § 11; L. 2000, ch. 17, § 5; L. 2001, ch. 88, § 12; L. 2009, ch. 29, § 11; L. 2016, ch. 15, § 9; L. 2024, ch. 6, § 22; January 1, 2025.

K.S.A. 9-2213. Time limit for deposit of escrow funds; records required.

- (a) Within three business days of receipt a licensee shall deposit all fees and money received from a borrower prior to the time a loan is consummated in an escrow account in a bank, savings bank, savings and loan association or credit union incorporated under the laws of this state, or organized under the laws of the United States or another state.
- (b) For each borrower the licensee shall maintain a separate record of all money received for any service performed or to be performed, including any payment to a third party, setting forth:
 - (1) The date the money was received;
 - (2) the amount of money received;
 - (3) the date the money was deposited in the escrow account; and
 - (4) the date, description, and justification for each disbursement.
- (c) Upon the request of a borrower, a copy of the record required by subsection (b) shall be provided to the borrower:
 - (1) Within five business days of consummation of the loan; or
 - (2) within five business days of receipt of written notice of the borrower's intention to withdraw from the loan transaction.

History: L. 1999, ch. 45, § 12; L. 2000, ch. 17, § 6; L. 2001, ch. 88, § 13; November 1.

K.S.A. 9-2214. Ownership of documents.

All original documents provided to the licensee by the borrower or at the expense of the borrower, including any appraisals, are the property of the borrower and at the borrower's request, shall be returned to the borrower without further expense if the loan is not consummated.

History: L 1999, ch. 45, § 13; L. 2001, ch. 88, § 14; November 1.

K.S.A. 9-2215. Change in licensee's business; notice.

- (a) A licensee shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:
 - (1) The closing or relocation of the principal place of business or the addition or closing of any branch office;
 - (2) a change in the licensee's name or legal entity status; or
 - (3) the addition or loss of any loan originator, owner, officer, partner or director.
- (b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a) and charge a reasonable fee for any action required by the commissioner as a result of such notice and additional information.

History: L. 1999, ch. 45, § 14; L. 2001, ch. 88, § 15; L. 2022, ch. 30, § 7; July 1.

K.S.A. 9-2216. Retention of records; time period; inspection of records; security of records; preservation of records.

- (a) A licensee shall keep copies of all documents or correspondence received or prepared by the licensee or registrant in connection with a loan or loan application and those records and documents required by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto, for such time frames as are specified in the rules and regulations. If the loan is not serviced by a licensee, the retention period commences on the date the loan is closed or, if the loan is not closed, the date of the loan application. If the loan is serviced by a licensee, the retention period commences on the date the loan is paid in full or the date the licensee ceases to service the loan.
- (b) All books, records and any other documents held by the licensee shall be made available for examination and inspection by the commissioner or the commissioner's designee. Certified copies of all records not kept within this state shall be delivered to the commissioner within three business days of the date such documents are requested.
- (c) Each licensee shall maintain the following information:
 - (1) The name, address and telephone number of each loan applicant;
 - (2) the type of loan applied for and the date of the application; and

- (3) the disposition of each loan application, including the date of loan funding, loan denial, withdrawal, name of lender if applicable, name of loan originator and any compensation or other fees received by the loan originator.
- (d) Each licensee shall establish, maintain and enforce written policies and procedures regarding security of records which are reasonably designed to prevent the misuse of a consumer's personal or financial information.
- (e) Before ceasing to conduct or discontinuing business, a licensee shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this act and applicable regulations for the remainder of each period specified.
- (f) Any records required to be retained may be maintained and preserved by nonerasable, nonalterable electronic imaging or by photograph on film. If the records are produced or reproduced by photographic film, electronic imaging or computer storage medium the licensee shall meet the following criteria:
 - (1) Arrange the records and index the films, electronic image or computer storage media to permit immediate location of any particular record;
 - (2) be ready at all times to promptly provide a facsimile enlargement of film, a computer printout or a copy of the electronic images or computer storage medium that the commissioner may request; and
 - (3) with respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration or destruction.
- (g) No person required to be licensed or registered under this act shall:
 - (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the commissioner or the commissioner's designee; or
 - (2) alter, destroy, shred, mutilate or conceal a record with the intent to impair the object's integrity or availability for use in a proceeding before the commissioner or a proceeding brought by the commissioner.

History: L. 1999, ch. 45, § 15; L. 2001, ch. 88, § 16; L. 2005, ch. 144, § 6; L. 2009, ch. 29, § 12; L. 2016, ch. 15, § 10; L. 2024, ch. 6, § 23; January 1, 2025.

K.S.A. 9-2216a. Annual written report; penalty; information confidential.

- (a) Each licensee shall annually, on or before April 1, file a written report with the commissioner containing the information that the commissioner may reasonably require concerning the licensee's business and operations during the preceding calendar year. The report shall be made in the form prescribed by the commissioner, which may include reports filed with the nationwide mortgage licensing system and registry. Any licensee who fails to file the report required by this section with the commissioner by April 1 shall be subject to a late penalty of \$100 for each day after April 1 the report is delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The commissioner may relieve any licensee from the payment of any penalty, in whole or in part, for good cause. The commissioner may apply any funds received from late penalties under this section to a consumer education fund, to be expended for such purpose as directed by the commissioner. The filing of the annual written report required under this section shall satisfy any other reports required of a licensee under this act.
- (b) Information contained in the annual report shall be confidential and may be published only in composite form. The provisions of this subsection providing for the confidentiality of public records shall expire on July 1, 2030, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2030.

History: L. 2001, ch. 88, § 1; L. 2009, ch. 29, § 13; L. 2016, ch. 15, § 11; L. 2017, ch. 52, § 12; L. 2022, ch. 62, § 2; L. 2024, ch. 6, § 24; January 1, 2025.

K.S.A. 9-2217. Confidentiality of examination reports; exceptions.

Examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners are confidential, except that the commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners.

History: L. 1999, ch. 45, § 16; April 8.

K.S.A. 9-2218. Cease and desist orders; civil fines.

- (a) If the commissioner determines after notice and opportunity for a hearing pursuant to the Kansas administrative procedure act that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any

rule and regulation or order hereunder, the commissioner by order may require any or all of the following:

- (1) That the person cease and desist from the unlawful act or practice;
 - (2) that the person pay a fine not to exceed \$10,000 per incident for the unlawful act or practice;
 - (3) If any person is found to have violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the commissioner may impose an additional penalty not to exceed \$10,000 for each such violation;
 - (4) censure the person if the person is registered or licensed under this act;
 - (5) bar or suspend the person from applying for a license or registration under this act, or associating with a mortgage business or supervised lender licensed in this state;
 - (6) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 8% per annum from the date of the violation; or
 - (7) that the person take such affirmative action as in the judgment of the commissioner will carry out the purposes of this act.
- (b) If the commissioner makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the commissioner may issue an emergency cease and desist order.
- (1) Such emergency order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto.
 - (2) Upon the entry of such an emergency order, the commissioner shall promptly notify the person subject to the order that it has been entered, of the reasons, and that a hearing will be held upon written request by the person.
 - (3) If the person requests a hearing, or in the absence of any request, if the commissioner determines that a hearing should be held, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Upon completion of the hearing the commissioner shall by written findings of fact and conclusions of law vacate, modify or make permanent the emergency order.

- (4) If no hearing is requested and none is ordered by the commissioner, the emergency order will remain in effect until it is modified or vacated by the commissioner.

History: L. 1999, ch. 45, § 17; L. 2000, ch. 17, § 7; L. 2005, ch. 144, § 7; July 1.

K.S.A. 9-2219. Injunction.

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

History: L. 1999, ch. 45, § 18; April 8.

K.S.A. 9-2220. Citation of act; severability clause.

- (a) The provisions of K.S.A. 9-2201 *et seq.*, and amendments thereto, and K.S.A. 9-2221 through K.S.A. 9-2234, and amendments thereto, shall be known and may be cited as the Kansas mortgage business act.
- (b) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

History: L. 1999, ch. 45, § 19; L. 2001, ch. 88, § 17; L. 2009, ch. 29, § 14; L. 2024, ch. 6, § 25; January 1, 2025.

K.S.A. 9-2221. Computation of any period of time under act.

- (a) Calendar days shall be used in computing any period of time. The day of the act, event or default from which the designated period of time begins to run shall not be included in such computation. Saturdays, Sundays and legal holidays shall be included in such computation. If the last day of the period so computed is a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or a legal holiday. "Legal holiday" shall include any day designated as a holiday by the federal reserve bank.
- (b) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 1; January 1, 2025.

K.S.A. 9-2222. Electronic writings or signatures authorized.

- (a) Any writing or signature required by this act may be provided or executed in an electronic form under K.S.A. 16-1601 *et seq.*, and amendments thereto.
- (b) If the consumer agrees in writing to the use of electronic methods instead of United States mail, any requirement under this act to mail a document may be satisfied by sending the document by electronic methods. When a document is sent by electronic methods, the time of sending and receipt is defined by K.S.A. 16-1615, and amendments thereto.
- (c) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 2; January 1, 2025.

K.S.A. 9-2223. Applicability of provisions to covered transactions.

- (a) K.S.A. 2024 Supp. 9-2223 through K.S.A. 9-2234, and amendments thereto, shall apply only to covered transactions, as defined in K.S.A. 9-2201, and amendments thereto.
- (b) K.S.A. 9-2203 through 9-2209, and amendments thereto, shall apply to licensed mortgage companies, as defined in K.S.A. 9-2201, and amendments thereto.
- (c) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 3; January 1, 2025.

K.S.A. 9-2224. Restrictions on interest in land as security; violation.

- (a) A mortgage company shall not make a covered transaction with an interest in land as security with an amount financed of \$5,000 or less in which the annual percentage rate of the loan exceeds the code mortgage rate. A security interest taken in violation of this section shall be void.
- (b) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 4; January 1, 2025.

K.S.A. 9-2225. Waiver or agreement to forego rights; settlement of claims; authorization to confess judgment prohibited; authorization in violation of section is void.

- (a) A consumer shall not waive or agree to forego rights or benefits under K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, relating to covered transactions except as follows:
 - (1) The following may be settled by agreement if disputed in good faith. Any claim:
 - (A) By a consumer against a mortgage company for any violation of K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, including for a civil penalty; or
 - (B) against a consumer for default or for breach of a duty imposed by K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto.
 - (2) A claim against a consumer shall be settled for less value than the amount claimed.
 - (3) A settlement in which the consumer waives or agrees to forego rights or benefits under K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer and the value of the consideration are relevant to the issue of unconscionability.
- (b) A consumer may not authorize any person to confess judgment on a claim arising out of a covered transaction. An authorization in violation of this section shall be void.
- (c) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 5; January 1, 2025.

K.S.A. 9-2226. Effect of violations on rights of parties; cause of action by consumer; correction of error by mortgage company; reimbursement of fees and costs.

- (a) Except as otherwise provided in K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, if a mortgage company has violated any provision of K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, relating to covered transactions, the consumer shall have a cause of action to recover from the mortgage company or person liable to the consumer actual damages and except for a class action, a penalty in an amount determined by the court not less than \$750 but not more than \$7,500.
- (b) An action under this section based on closed-end covered transaction violations shall be brought within one year of the last scheduled payment due date stated in the agreement. An action under this section based on open-end covered transaction violations shall be brought within two years from the date of occurrence.

- (c) If a person has violated K.S.A. 9-2203(a), and amendments thereto, in originating a covered transaction, such covered transaction shall be void. The consumer shall not be obligated to pay the amount financed or the finance charge and such consumer shall have a right to recover any finance charge paid from either the person violating this act or from the consumer's mortgage servicer.
- (d) A consumer shall not be obligated to pay a charge on a covered transaction in excess of that allowed by K.S.A. 9-2223 through K.S.A. 9-2234, and amendments thereto. A consumer shall have a right of refund for twice the excess charges from the person who made the excess charge or from the consumer's mortgage servicer. A consumer may request a refund payment check or application to the outstanding obligation. Following a reasonable time after demand, if the request is refused, the consumer may recover twice the excess charge from the person liable or the mortgage company and, except for a class action, an amount determined by the court not less than \$750 but not more than \$7,500.
- (e) A mortgage company shall have no penalty liability as discussed in this section if within 60 days after discovering the error the mortgage company corrects the error through refund or adjustment and notifies the consumer of the error. This waiver shall not apply if an action has already been instituted or the consumer has provided written notice of the violation. If the violation is a prohibited agreement, providing a corrected copy of the writing containing the error shall be sufficient notification and correction.
- (f) If the mortgage company establishes, by a preponderance of evidence, that a violation is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adopted to avoid any such violation or error, no liability is imposed under this section.
- (g) A mortgage company who in good faith complies with a written administrative guidance document shall not be subject to any penalties under this section for any act done or omitted in conformity with such written administrative guidance document.
- (h) Except as otherwise provided, no violation of the provisions of K.S.A. 9-2223 through K.S.A. 9-2234, and amendments thereto, shall impair rights on a debt.
- (i) The mortgage company shall reimburse the consumer's reasonable attorney fees and cost of the action if the proceeding finds that the mortgage company has violated any provision of K.S.A. 9-2223 through K.S.A. 9-2234, and amendments thereto. Reasonable attorney fees shall be determined by the value of the time expended by the attorney and not by the amount of the recovery on behalf of the consumer.
- (j) This section shall not apply to attorneys or collection agencies that did not purchase the mortgage loan.
- (k) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 6; January 1, 2025.

K.S.A. 9-2227. Right to prepay unpaid balance of covered transaction.

- (a) The consumer may prepay in full the unpaid balance of a covered transaction at any time without penalty.
- (b) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 7; January 1, 2025.

K.S.A. 9-2228. Limitation on periodic finance charge for covered transactions and prepaid finance charges.

- (a) The periodic finance charge for a covered transaction shall not exceed 18% per annum, subject to the limitations on prepaid finance charges set forth in this subsection. This subsection shall not apply to a:
 - (1) Loan secured by a first mortgage that constitutes a covered transaction by virtue of the loan-to-value ratio that exceeds 100% at the time the loan is made; or
 - (2) covered transaction where the finance charge is governed by K.S.A. 16-207(e)(4), and amendments thereto.
- (b) If a loan secured by a first mortgage constitutes a covered transaction by virtue of the loan-to-value ratio exceeding 100% at the time the loan is made, then the periodic finance charge for the loan shall not exceed that authorized pursuant to K.S.A. 16-207(a), and amendments thereto, but the loan is subject to the limitations on prepaid finance charges set forth in this section. Such prepaid finance charges may be charged in addition to the finance charges permitted under K.S.A. 16-207(a), and amendments thereto.
- (c) This section shall not be construed to limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount or otherwise, provided the rate and the amount of the finance charge does not exceed that permitted by this section.
- (d) Prepaid finance charges on covered transactions shall be limited to an amount not to exceed 8% of the amount financed, provided that the aggregate amount of prepaid finance charges payable to the mortgage company or any person related to such company does not exceed 5% of the amount financed. Prepaid finance charges permitted under this subsection shall be in addition to finance charges permitted under subsection (a). Prepaid finance charges permitted under this subsection shall be fully earned when paid and such prepaid finance charges shall be nonrefundable unless the parties agree otherwise in writing.

- (e) The finance charge limitations in subsection (a) shall not apply to a covered transaction for which the finance charge is governed pursuant to K.S.A. 16-207(e)(4), and amendments thereto.
- (f) If, within 12 months after the date of the original covered transaction, a mortgage company or a person related to such company refinances a covered transaction, with respect to which a prepaid finance charge was payable to the same person then the aggregate amount of prepaid finance charges payable to the mortgage company or any person related to such company with respect to the new covered transaction shall not exceed 5% of the additional amount financed.
- (g) For purposes of this section, "additional amount financed" means the difference between:
 - (1) The amount financed for the new covered transaction, less the amount of all closing costs incurred in connection with the new covered transaction that are not included in the prepaid finance charges for the new covered transaction; and
 - (2) the unpaid principal balance of the original covered transaction.
- (h) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 8; January 1, 2025.

K.S.A. 9-2229. Additional charges allowed.

- (a) In addition to the finance charge permitted by K.S.A. 9-2223 through K.S.A. 9-2234, and amendments thereto, for covered transactions, a mortgage company may contract for and receive the following additional charges for such covered transactions:
 - (1) Closing costs incurred in connection with the covered transaction that are not included in the prepaid finance charges for the covered transaction;
 - (2) late fees permitted pursuant to K.S.A. 9-2230, and amendments thereto;
 - (3) charges for other benefits, including insurance, conferred on the consumer if the benefits are of value to the consumer, and if:
 - (A) The charges are reasonable in relation to the benefits;
 - (B) the benefits are of a type that is not for credit and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the commissioner; or
 - (4) a service charge for an insufficient payment method not to exceed \$30 subject to the limitations contained in this subsection.

- (A) Notice shall be given to a consumer providing an insufficient payment method either by:
 - (i) United States first class mail addressed to the consumer's last known address; or
 - (ii) a clear notice of the insufficient payment method charge on the consumer's regular monthly statement.
 - (B) If the consumer does not pay the amount of the insufficient payment plus the service charge to the payee within 14 days from the giving of notice, the payee may add the service charge to the outstanding balance of such indebtedness of the consumer to draw interest at the contract rate applicable to such indebtedness.
- (b) With respect to an open-end covered transaction, a mortgage company may charge the following fees in an amount not to exceed that agreed to by the consumer:
- (1) Fees on a monthly or annual basis;
 - (2) over-limit fees; and
 - (3) cash advance fees.
- (c) the fees permitted under subsection (b) are in addition to any finance charges or any additional charges permitted by K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto.
- (d) A mortgage company may charge a borrower up to \$5 per payment when the borrower makes a single installment payment through electronic methods for a covered transaction, including by authorizing the mortgage company, verbally or in writing, to initiate the payment, subject to the following limitations. No charge shall be assessed:
- (1) If a late fee is assessed on the same installment; or
 - (2) where the consumer has agreed in writing to make all scheduled payments through the use of electronic methods.
- (e) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 9; January 1, 2025.

K.S.A. 9-2230. Late fees authorized; limitation.

- (a) The parties to a covered transaction may contract for a late fee on any installment not paid in full within 10 calendar days after its scheduled or deferred due date in an amount not to exceed 5% of the unpaid amount of the installment or \$25, whichever is less.
- (b) As an alternative to the late fee set forth in subsection (a), the parties to a covered transaction may contract for a late fee not to exceed \$10 on any installment not paid in full within 10 calendar days after its scheduled or deferred due date, except that if the scheduled payment amount is \$25 or less, the maximum late fee shall be \$5.
- (c) A late fee may be assessed only once on an installment regardless of the length of time such installment remains in default. A late fee may be collected at the time it is assessed or at any time thereafter.
- (d) No late fee may be assessed when such a fee or charge is attributable solely to the failure of the consumer to pay a late fee on an earlier installment and the payment is otherwise a periodic payment received on the due date or within 10 calendar days after its scheduled or deferred installment due date.
- (e) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 10; January 1, 2025.

K.S.A. 9-2231. Loans secured by mortgages on consumer's principal residence; negative amortization and balloon payments prohibited.

- (a) A covered transaction shall not provide for the negative amortization of principal or a balloon payment when the loan-to-value ratio at the time such covered transaction was made exceeds 100% or when the annual percentage rate of the loan exceeds the code mortgage rate unless such covered transaction is open-end, incurred to acquire or construct the consumer's principal residence or a reverse mortgage.
- (b) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 11; January 1, 2025.

K.S.A. 9-2232. Appraisals required; notice to consumer of high loan-to-value mortgage; refund of certain fees after consumer withdrawals from covered transaction.

- (a) The provisions of this section shall not apply to a mortgage company that is exempt pursuant to K.S.A. 9-2202(a), and amendments thereto.
- (b) Before making a covered transaction, a mortgage company shall obtain the appraised value of the real estate to be encumbered. If, based upon the appraisal, the loan-to-value ratio of

the covered transaction exceeds 100%, then the mortgage company shall deliver to the consumer not less than three days before the loan is made a:

- (1) Free copy of the appraisal; and
 - (2) written notice regarding high loan-to-value-mortgages and the availability of consumer credit counseling.
- (c) If within three days after receiving the notice, the consumer elects not to enter into the covered transaction, then the mortgage company shall promptly refund to the consumer any application fees or other amounts paid by the consumer to such mortgage company except for the following:
- (1) Bona fide out-of-pocket costs incurred before the consumer elected not to enter into the covered transaction, provided that such costs were paid or are payable to unrelated persons; and
 - (2) a bona fide appraisal fee paid or payable to the mortgage company or a related person.
- (d) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 12; January 1, 2025.

K.S.A. 9-2233. Enforcement of default provision in agreement.

- (a) An agreement of the parties to a covered transaction with respect to default on the part of the consumer shall be enforceable only to the extent that the:
- (1) Consumer fails to make a payment as required by agreement; or
 - (2) (A) prospect of payment, performance or realization of collateral is significantly impaired.

(B) For purposes of this paragraph, the burden of establishing the prospect of significant impairment shall be on the mortgage company.
- (b) The provisions of this section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 13; January 1, 2025.

K.S.A. 9-2234. Cure of default and notice of right to cure; surrender of collateral by consumer; possession of collateral by mortgage company.

- (a) After a consumer has been in default for 10 days for failure to make a required payment in a covered transaction payable in installments, a mortgage company may give the consumer the notice described in this section.
 - (1) A mortgage company provides notice to the consumer under this section when the mortgage company delivers the notice to the consumer or delivers or mails the notice to the consumer's residence.
 - (2) The notice shall be in writing and shall conspicuously state:
 - (A) The name, address and telephone number of the mortgage company to which payment is to be made;
 - (B) brief description of the covered transaction;
 - (C) the consumer's right to cure the default;
 - (D) the amount of payment and date by which payment must be made to cure the default; and
 - (E) the consumer's possible liability for the reasonable costs of collection including, but not limited to, court costs, either attorney fees or collection agency fees, and any other information required by the commissioner as set forth by rules and regulations or by administrative interpretation.
- (b) With respect to a covered transaction payable in installments, after a default consisting only of the consumer's failure to make a required payment, a mortgage company may neither accelerate maturity of the unpaid balance of the obligation or take possession of collateral as a result of such default until 20 days after a notice of the consumer's right to cure is given. Within 20 days after the notice is given, the consumer may cure all defaults resulting from a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid late fees. Such cure restores the consumer to the consumer's rights under the agreement as though the defaults had not occurred.
- (c) With respect to defaults on the same obligation after a mortgage company has once given a notice of the consumer's right to cure, this section shall confer on the consumer no right to cure and imposes no limitation on the mortgage company's right to proceed against the consumer or the collateral.
- (d) Unless the consumer voluntarily surrenders the collateral to the mortgage company, the mortgage company may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.

- (e) Nothing in this section shall be construed to prohibit a consumer from voluntarily surrendering the collateral of the covered transaction and shall not prohibit the mortgage company from thereafter enforcing the mortgage company's security interest in the collateral at any time after surrender.
- (f) This section shall be a part of and supplemental to the Kansas mortgage business act.

History: L. 2024, ch. 6, § 14; January 1, 2025.