

Agency 75

State Bank Commissioner—Consumer and Mortgage Lending Division

Editor's Note:

The office of the consumer credit commissioner was abolished on July 1, 1999. Powers, duties and functions of the department were transferred to the state bank commissioner. The deputy commissioner for consumer and mortgage lending shall be the successor in every way to those powers, duties and functions of the consumer credit commissioner concerning the administration of the uniform consumer credit code. See K.S.A. 75-1314 and 75-1315.

Articles

75-6. UNIFORM CONSUMER CREDIT CODE.

Article 6.—UNIFORM CONSUMER CREDIT CODE

75-6-1. Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same. The parties to a sale, lease, loan, or modification of a sale, lease, or loan that is not a consumer credit transaction may agree in a writing signed by the parties to make the transaction subject to the Kansas uniform consumer credit code. Any such agreement may be included in the contractual agreement evidencing the credit transaction, and when so included, no additional signatures shall be required to evidence the agreement to include the transaction within the scope of the Kansas uniform consumer credit code other than the signatures normally used in executing the credit transaction. In order to be effective, each such agreement shall be executed simultaneously with the contractual agreement evidencing the credit transaction. (Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-1-109; effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended Oct. 2, 2009.)

75-6-9. Additional charges. (a) The charges enumerated in K.S.A. 16a-2-501 (1)(d), and amendments thereto, shall be considered “additional charges in connection with a consumer credit transaction” if the charges meet the following requirements:

(1) Are made under conditions that permit their exclusion from the definition of “finance

charge” under K.S.A. 16a-1-301 (22) and amendments thereto; and

(2) are payable to a third party who is not related to the creditor, except as allowed by K.S.A. 16a-1-301 (10)(b) and amendments thereto.

(b) Additional charges shall be considered “in connection with a consumer credit transaction,” as used in K.S.A. 16a-2-501 and amendments thereto and subsection (a) of this regulation, if either of the following conditions is met:

(1) In relation to insurance premiums, the creditor or a person related to the creditor receives a commission on any insurance sold on the same day on which the consumer credit transaction was consummated.

(2) In relation to all other additional charges, the charges are made for goods, services, or both rendered within one month before or after the consummation of the consumer credit transaction. (Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-501(1)(d); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1985; amended Sept. 20, 1996; amended Oct. 2, 2009.)

75-6-31. Bond requirements. (a) Each applicant for a supervised loan license shall submit a bond in the following amounts:

(1) For any applicant who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed, \$250,000.00 for the first licensed place of business, plus an additional \$25,000.00 for each ad-

ditional licensed place of business or, if the applicant made more than \$50,000,000.00 in such loans in Kansas during the previous calendar year, \$300,000.00; or

(2) for all other applicants, \$100,000.00 for the first licensed place of business, plus an additional \$25,000.00 for each additional licensed place of business.

(b) The total bond requirement for each applicant shall not exceed \$300,000.00, unless the administrator determines, after consideration of the factors specified in subsection (c), that special circumstances require a higher bond amount in order to adequately protect Kansas consumers.

(c) In determining whether a higher bond amount is necessary, the following factors shall be considered by the administrator:

(1) Whether the business proposed to be conducted by the applicant involves technology or methods that may require additional regulatory oversight by the administrator;

(2) whether the applicant has been the subject of regulatory or disciplinary actions by the administrator, any regulatory body of this state or any other state, or any federal regulatory body; or

(3) whether the applicant's structure, business activities, or operations possess elements of risk that may require additional regulatory oversight by the administrator. (Authorized by K.S.A. 16a-2-302(1)(a), as amended by 2009 SB 240, §17, and K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-302(2), as amended by 2009 SB 240, §17; effective July 14, 2000; amended Jan. 6, 2006; amended Oct. 2, 2009.)

75-6-33. (Authorized by K.S.A. 2002 Supp. 16a-6-104; implementing K.S.A. 2002 Supp. 16a-2-304; effective Oct. 31, 2003; revoked Oct. 2, 2009.)

75-6-34. (Authorized by K.S.A. 2002 Supp. 16a-6-104 and K.S.A. 2002 Supp. 16a-3-308; implementing K.S.A. 2002 Supp. 16a-3-308; effective Sept. 12, 2003; revoked Oct. 2, 2009.)

75-6-36. Prelicensing and continuing education; requirements. (a) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall complete at least 20 hours of prelicensing professional education

(PPE) approved in accordance with subsection (c), which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and CPE course shall first be approved by the administrator, or the administrator's designee, before granting credit.

(d) In addition to the specific topic requirements in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the administrator. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 16a-1-301 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the administrator. Each residential mortgage loan originator registrant shall ensure that PPE or CPE credit has been properly submitted to the administrator and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) Each residential mortgage loan originator

registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each residential mortgage loan originator registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 16a-2-302 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A residential mortgage loan originator registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught. (Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

75-6-37. Prelicensure testing. (a) On and after July 31, 2010, each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the administrator's designee for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics;

(2) federal laws and regulations pertaining to mortgage origination;

(3) state laws and regulations pertaining to mortgage origination;

(4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c)(1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

(2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(4) A registered mortgage loan originator registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289. (Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

75-6-38. Record retention. (a) In any loan, lease, or credit sale not secured by an interest in real estate, the licensee or any person required to file notification with the administrator pursuant to K.S.A. 16a-6-202, and amendments thereto, shall retain the following:

(1) The following documents, as applicable, in any transaction closed in the name of the licensee or person filing notification, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

(A) The application;

(B) the contract and any addendum or rider;

(C) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges, or consumer lease disclosures;

(D) any written agreements with the borrower that describe rates or fees;

(E) any documentation that aided the licensee or person in making a credit decision, including a credit report, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(F) all paid invoices for credit report, filing, and any other closing costs;

(G) any credit insurance requests and insurance certificates;

(H) the assignment of the contract;

(I) phone log or any correspondence with associated notes detailing each contact with the consumer;

(J) all other agreements for products or services charged in connection with each transaction by the licensee, person filing notification, or third party, including guaranteed asset protection (GAP) and warranties; and

(K) any other disclosures or statements required by law; and

(2) the following documents, as applicable, in any transaction in which the licensee or person filing notification owns the account and directly or indirectly undertakes collection of payments or

enforcement of rights against debtors, for at least 36 months after the final entry to each account:

(A) A complete payment history, including the following:

- (i) An explanation of transaction codes, if used;
- (ii) the principal balance;
- (iii) the payment amount;
- (iv) the payment date;
- (v) the distribution of the payment amount to interest, principal, and late fees or other fees; and
- (vi) any other amounts that have been added to, or deducted from, a consumer's account;

(B) any other statements, disclosures, invoices, or information for each account, including the following:

(i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, skip tracing, retaking, or repossession fees;

(ii) loan modification agreements;

(iii) forbearance or any other repayment agreements;

(iv) subordination agreements;

(v) surplus or deficiency balance statements;

(vi) default-related correspondence or documents;

(vii) evidence of sale of repossessed collateral;

(viii) the notice of the consumer's right to cure;

(ix) property insurance advance disclosure;

(x) force-placed property insurance;

(xi) notice and evidence of credit insurance premium refunds;

(xii) deferred interest;

(xiii) suspense accounts;

(xiv) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(xv) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

(i) Historical records for all adjustable rate indices used;

(ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(iii) a log of all accounts in which repossession activity has been initiated;

(iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(b) In any loan secured by an interest in real estate, the licensee shall retain the following:

(1) The following documents, as applicable, in any mortgage loan in which the licensee does not close the transaction in the licensee's name, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

(A) The application;

(B) the good faith estimate;

(C) the early truth-in-lending disclosure statement;

(D) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

(E) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, 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, or, for a nonpurchase money real estate transaction, the estimated market value as determined through an automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto, acceptable to the administrator;

(F) the adjustable rate mortgage (ARM) disclosure;

(G) the home equity line of credit (HELOC) disclosure statement;

(H) the affiliated business arrangement disclosure;

(I) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;

(J) the certificate of counseling for home equity conversion mortgages (HECMs);

(K) the loan cost disclosure statement for HECMs;

(L) the notice to the borrower for HECMs;

(M) phone log or any correspondence with associated notes detailing each contact with the consumer;

(N) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;

- (O) the settlement statement; and
- (P) all paid invoices for appraisal, title work, credit report, and any other closing costs;
- (2) the following documents, as applicable, in any transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, for at least 36 months from the closing date of the transaction:
- (A) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;
- (B) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;
- (C) any credit insurance requests and insurance certificates;
- (D) the note and any other applicable contract addendum or rider;
- (E) a copy of the filed mortgage or deed;
- (F) a copy of the title policy or search;
- (G) the assignment of the mortgage and note;
- (H) the initial escrow account statement or escrow account waiver;
- (I) the notice of the right to rescind or waiver of the right to rescind;
- (J) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), if applicable;
- (K) the mortgage servicing disclosure statement and applicant acknowledgement;
- (L) the notice of transfer of mortgage servicing;
- (M) any interest rate lock-in agreement or float agreement; and
- (N) any other disclosures or statements required by law; and
- (3) the following documents, as applicable, in any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months from the final entry to each account:
- (A) A complete payment history, including the following:
- (i) An explanation of transaction codes, if used;
 - (ii) the principal balance;
 - (iii) the payment amount;
 - (iv) the payment date;
 - (v) the distribution of the payment amount to interest, principal, late fees or other fees, and escrow; and
 - (vi) any other amounts that have been added to, or deducted from, a consumer's account;
- (B) any other statements, disclosures, invoices, or information for each account, including the following:
- (i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;
 - (ii) annual escrow account statements and related escrow account analyses;
 - (iii) notice of shortage or deficiency in escrow account;
 - (iv) loan modification agreements;
 - (v) forbearance or any other repayment agreements;
 - (vi) subordination agreements;
 - (vii) foreclosure notices;
 - (viii) evidence of sale of foreclosed homes;
 - (ix) surplus or deficiency balance statements;
 - (x) default-related correspondence or documents;
 - (xi) the notice of the consumer's right to cure;
 - (xii) property insurance advance disclosure;
 - (xiii) force-placed property insurance;
 - (xiv) notice and evidence of credit insurance premium refunds;
 - (xv) deferred interest;
 - (xvi) suspense accounts;
 - (xvii) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and
 - (xviii) any other product or service agreements; and
- (C) documents related to the general servicing activities of the licensee, including the following:
- (i) Historical records for all adjustable rate mortgage indices used;
 - (ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;
 - (iii) a log of all accounts in which foreclosure activity has been initiated;
 - (iv) a log of all credit insurance claims and accounts paid by credit insurance; and
 - (v) a schedule of servicing fees and charges imposed by the licensee or a third party.
- (c) In addition to meeting the requirements specified in subsections (a) and (b), each licensee or person filing notification shall retain for at least

the previous 36 months the documents related to the general business activities of the licensee or person filing notification, which shall include the following:

(1) Advertising records, including copies of printed advertisements or solicitations and those by internet or other electronic means;

(2) the business account check ledger or register;

(3) all financial statements, balance sheets, or statements of condition;

(4) a detailed list of all transactions originated, closed, purchased, or serviced; and

(5) a schedule of the licensee's fees and charges. (Authorized by K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-304, as amended by 2009 SB 240, §19; effective Oct. 2, 2009.)