

CHAPTER 47

FINANCIAL CORPORATIONS

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47.0156 CLOSING EFFECTING A PERMANENT CESSATION OF BUSINESS.

The permanent closing of a financial institution as defined in section 47.015 or 47.0151 for purposes, or with a result, other than authorized in sections 47.015 to 47.0155 is unlawful unless at least 60 days' written notice is given to the commissioner.

History: 1999 c 151 s 6

47.101 PLACE OF BUSINESS; RELOCATION, DISPOSAL.

[For text of subds 1 and 2, see M.S.1998]

Subd. 3. **Applications to department of commerce.** An application by a banking institution to relocate its main office other than those provided for in subdivision 2 shall be accompanied by a filing fee of \$3,000 payable to the commissioner of commerce and approved or disapproved by the commissioner of commerce as provided for in sections 46.041 and 46.044.

History: 1999 c 151 s 7

47.20 LENDING AUTHORITY OF FINANCIAL INSTITUTIONS.

[For text of subd 1, see M.S.1998]

Subd. 2. **Definitions.** For the purposes of this section the terms defined in this subdivision have the meanings given them:

(1) "Actual closing costs" mean reasonable charges for or sums paid for the following, whether or not retained by the mortgagee or lender:

(a) Any insurance premiums including but not limited to premiums for title insurance, fire and extended coverage insurance, flood insurance, and private mortgage insurance, but excluding any charges or sums retained by the mortgagee or lender as self-insured retention.

(b) Abstracting, title examination and search, and examination of public records.

(c) The preparation and recording of any or all documents required by law or custom for closing a conventional or cooperative apartment loan.

(d) Appraisal and survey of real property securing a conventional loan or real property owned by a cooperative apartment corporation of which a share or shares of stock or a membership certificate or certificates are to secure a cooperative apartment loan.

(e) A single service charge, which includes any consideration, not otherwise specified herein as an "actual closing cost" paid by the borrower and received and retained by the lender for or related to the acquisition, making, refinancing or modification of a conventional or cooperative apartment loan, and also includes any consideration received by the lender for making a borrower's interest rate commitment or for making a borrower's loan commitment, whether or not an actual loan follows the commitment. The term service charge does not include forward commitment fees. The service charge shall not exceed one percent of the original bona fide principal amount of the conventional or cooperative apartment loan, except that in the case of a construction loan, the service charge shall not exceed two percent of the original bona fide principal amount of the loan. That portion of the service charge imposed be-

cause the loan is a construction loan shall be itemized and a copy of the itemization furnished the borrower. A lender shall not collect from a borrower the additional one percent service charge permitted for a construction loan if it does not perform the service for which the charge is imposed or if third parties perform and charge the borrower for the service for which the lender has imposed the charge.

(f) Charges and fees necessary for or related to the transfer of real or personal property securing a conventional or cooperative apartment loan or the closing of a conventional or cooperative apartment loan paid by the borrower and received by any party other than the lender.

(2) "Contract for deed" means an executory contract for the conveyance of real estate, the original principal amount of which is less than \$100,000. A commitment for a contract for deed shall include an executed purchase agreement or earnest money contract wherein the seller agrees to finance any part or all of the purchase price by a contract for deed.

(3) "Conventional loan" means a loan or advance of credit, other than a loan or advance of credit made by a credit union or made pursuant to section 334.011, to a noncorporate borrower in an original principal amount of less than \$100,000, secured by a mortgage upon real property containing one or more residential units or upon which at the time the loan is made it is intended that one or more residential units are to be constructed, and which is not insured or guaranteed by the secretary of housing and urban development, by the administrator of veterans affairs, or by the administrator of the farmers home administration, and which is not made pursuant to the authority granted in subdivision 1, clause (3) or (4). The term mortgage does not include contracts for deed or installment land contracts.

(4) "Cooperative apartment loan" means a loan or advance of credit, other than a loan or advance of credit made by a credit union or made pursuant to section 334.011, to a noncorporate borrower in an original principal amount of less than \$100,000, secured by a security interest on a share or shares of stock or a membership certificate or certificates issued to a stockholder or member by a cooperative apartment corporation, which may be accompanied by an assignment by way of security of the borrower's interest in the proprietary lease or occupancy agreement in property issued by the cooperative apartment corporation and which is not insured or guaranteed by the secretary of housing and urban development, by the administrator of veterans affairs, or by the administrator of the farmers home administration.

(5) "Cooperative apartment corporation" means a corporation or cooperative organized under chapter 308A or 317A, the shareholders or members of which are entitled, solely by reason of their ownership of stock or membership certificates in the corporation or association, to occupy one or more residential units in a building owned or leased by the corporation or association.

(6) "Forward commitment fee" means a fee or other consideration paid to a lender for the purpose of securing a binding forward commitment by or through the lender to make conventional loans to two or more credit worthy purchasers, including future purchasers, of residential units, or a fee or other consideration paid to a lender for the purpose of securing a binding forward commitment by or through the lender to make conventional loans to two or more credit worthy purchasers, including future purchasers, of units to be created out of existing structures pursuant to chapter 515B, or a fee or other consideration paid to a lender for the purpose of securing a binding forward commitment by or through the lender to make cooperative apartment loans to two or more credit worthy purchasers, including future purchasers, of a share or shares of stock or a membership certificate or certificates in a cooperative apartment corporation; provided, that the forward commitment rate of interest does not exceed the maximum lawful rate of interest effective as of the date the forward commitment is issued by the lender.

(7) "Borrower's interest rate commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees that, if a conventional or cooperative apartment loan is made following issuance of and pursuant to the commitment, the conventional or cooperative apartment loan shall be made at a rate of interest not in excess of the rate of interest agreed to in the commitment, provided that the rate of interest agreed to in the commitment is not in excess of the maximum lawful rate of interest effective as of the date the commitment is issued by the lender to the borrower.

(8) "Borrower's loan commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees to make a conventional or cooperative apartment loan pursuant to the provisions, including the interest rate, of the commitment, provided that the commitment rate of interest does not exceed the maximum lawful rate of interest effective as of the date the commitment is issued and the commitment when issued and agreed to shall constitute a legally binding obligation on the part of the mortgagee or lender to make a conventional or cooperative apartment loan within a specified time period in the future at a rate of interest not exceeding the maximum lawful rate of interest effective as of the date the commitment is issued by the lender to the borrower; provided that a lender who issues a borrower's loan commitment pursuant to the provisions of a forward commitment is authorized to issue the borrower's loan commitment at a rate of interest not to exceed the maximum lawful rate of interest effective as of the date the forward commitment is issued by the lender.

(9) "Finance charge" means the total cost of a conventional or cooperative apartment loan including extensions or grant of credit regardless of the characterization of the same and includes interest, finder's fees, and other charges levied by a lender directly or indirectly against the person obtaining the conventional or cooperative apartment loan or against a seller of real property securing a conventional loan or a seller of a share or shares of stock or a membership certificate or certificates in a cooperative apartment corporation securing a cooperative apartment loan, or any other party to the transaction except any actual closing costs and any forward commitment fee. The finance charges plus the actual closing costs and any forward commitment fee, charged by a lender shall include all charges made by a lender other than the principal of the conventional or cooperative apartment loan. The finance charge, with respect to wraparound mortgages, shall be computed based upon the face amount of the wraparound mortgage note, which face amount shall consist of the aggregate of those funds actually advanced by the wraparound lender and the total outstanding principal balances of the prior note or notes which have been made a part of the wraparound mortgage note.

(10) "Lender" means any person making a conventional or cooperative apartment loan, or any person arranging financing for a conventional or cooperative apartment loan. The term also includes the holder or assignee at any time of a conventional or cooperative apartment loan.

(11) "Loan yield" means the annual rate of return obtained by a lender over the term of a conventional or cooperative apartment loan and shall be computed as the annual percentage rate as computed in accordance with sections 226.5 (b), (c), and (d) of Regulation Z, Code of Federal Regulations, title 12, section 226, but using the definition of finance charge provided for in this subdivision. For purposes of this section, with respect to wraparound mortgages, the rate of interest or loan yield shall be based upon the principal balance set forth in the wraparound note and mortgage and shall not include any interest differential or yield differential between the stated interest rate on the wraparound mortgage and the stated interest rate on the one or more prior mortgages included in the stated loan amount on a wraparound note and mortgage.

(12) "Person" means an individual, corporation, business trust, partnership or association or any other legal entity.

(13) "Residential unit" means any structure used principally for residential purposes or any portion thereof, and includes a unit in a common interest community, a nonowner occupied residence, and any other type of residence regardless of whether the unit is used as a principal residence, secondary residence, vacation residence, or residence of some other denomination.

(14) "Vendor" means any person or persons who agree to sell real estate and finance any part or all of the purchase price by a contract for deed. The term also includes the holder or assignee at any time of the vendor's interest in a contract for deed.

[For text of subds 3 to 6a, see M.S.1998]

Subd. 6b. **Delinquency or late payment fees.** A lender making a conventional loan may assess and collect fees for late payments according to the provision of section 47.59.

[For text of subds 6c to 13a, see M.S.1998]

Subd. 14. [Repealed, 1999 c 151 s 49]

History: 1999 c 11 art 3 s 1; 1999 c 151 s 8

47.203 FEDERAL PREEMPTION OVERRIDE.

The provisions of Public Law Number 96–221, title V, part A, section 501(a)(1) (United States Code, title 12, section 1735f–7a), do not apply with respect to a loan, mortgage, credit sale or advance made in this state after June 2, 1981, nor with respect to a loan, mortgage, credit sale or advance secured by real property located in this state and made after June 2, 1981.

History: 1999 c 151 s 9

47.204 TEMPORARY REMOVAL OF MORTGAGE USURY LIMITS.

Subdivision 1. **No usury limits.** Notwithstanding any law to the contrary, no limitation on the rate or amount of interest, discount points, finance charges, or other charges shall apply to a loan, mortgage, credit sale, or advance which would have been exempt from the laws of this state pursuant to Public Law Number 96–221, title V, part A, section 501 (United States Code, title 12, section 1735f–7a), as amended as of June 2, 1981, but for section 47.203 and which is made in this state after June 2, 1981.

[For text of subd 2, see M.S.1998]

History: 1999 c 151 s 10

47.207 PRIVATE MORTGAGE INSURANCE.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given:

(a) “Current fair market value” means the value of the mortgagor’s property determined by an appraisal conducted within 90 days of a mortgagor’s written request for cancellation of private mortgage insurance. The appraisal shall be conducted by a real estate appraiser, licensed or certified by a state or federal agency, who is reasonably acceptable to the servicer. The appraisal may be conducted at either the request of the lender, mortgagor, or servicer. The mortgagor is responsible for the cost of the appraisal.

(b) “Lender” means a person who makes or holds a residential mortgage loan.

(c) “Private mortgage insurance” means insurance paid for by the mortgagor, including any mortgage guaranty insurance, against the nonpayment of, or default on, a residential mortgage loan, other than mortgage insurance made available under the federal National Housing Act, United States Code, title 38, or title V of the federal Housing Act of 1949. “Private mortgage insurance” does not mean lender–paid mortgage insurance.

(d) “Residential mortgage loan” means a loan secured by either: (1) a mortgage on residential real property; or (2) by certificates of stock or other evidence of ownership interest in and proprietary lease from corporations, partnerships, or other forms of business organizations formed for the purpose of cooperative ownership of residential real property.

(e) “Servicer” means a person who, through any medium or mode of communication, engages in the collection or remittance for, or the right or obligation to collect or remit for, a lender, mortgagee, note owner, noteholder, or for a person’s own account, of payments, interest, principal, and escrow items such as insurance and taxes for property subject to a residential mortgage loan.

Subd. 2. **Right to cancel private mortgage insurance.** With respect to an existing or future residential mortgage loan, a mortgagor shall have the right to elect, in writing, to cancel private mortgage insurance in connection with a residential mortgage loan if all of the following terms and conditions have been met:

(1) the current unpaid principal balance of the mortgage is 80 percent or less of the current fair market value of the property;

(2) the mortgagor has not:

(i) been 60 days or longer past due on a mortgage payment during the 12–month period beginning 24 months before the date on which the servicer receives the mortgagor’s written request for cancellation; or

(ii) been 30 days or longer past due on a mortgage payment during the 12 months preceding the date on which the servicer receives the mortgagor's written request for cancellation;

(3) the mortgage was made at least 24 months prior to the receipt of a request for cancellation;

(4) the property securing the mortgage loan is owner-occupied; and

(5) the mortgage has not been pooled with other mortgages in order to constitute, in whole or in part, collateral for bonds issued by the state of Minnesota or any political subdivision of the state of Minnesota or of any agency of any political subdivision of the state of Minnesota.

Subd. 3. **Notice of right to cancel private mortgage insurance.** (a) With respect to each existing or future residential mortgage loan, a servicer must provide an annual written notice to the mortgagor currently paying premiums for private mortgage insurance. The notice must be in 12-point type or greater and appear substantially as follows:

NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE

If you currently pay private mortgage insurance premiums, you may have the right under federal law or Minnesota law to cancel the insurance and stop paying premiums. This would **reduce your total monthly payment**.

You may have the right to cancel private mortgage insurance if the principal balance of your loan is 80 percent or less of the current market value of your home. Under Minnesota law, the value of your property can be determined by a professional appraisal. You need to pay for this appraisal, but in most cases you will be able to recover this cost in less than a year if your mortgage insurance is canceled.

If you wish to learn whether you are eligible to cancel this insurance, please contact us at (enter address and phone number of servicer).

(b) The notice required by this subdivision must be on its own page, but a disclosure notice concerning private mortgage insurance required by federal law may be included on the same page as the disclosure notice required by this subdivision. The page containing the notice required by this subdivision may be included with other disclosures or notices required by federal law that are sent to the mortgagor.

(c) If the mortgage has been pooled with other mortgages in order to constitute, in whole or in part, collateral for bonds issued by the state of Minnesota or any political subdivision of the state of Minnesota or of any agency of any political subdivision of the state of Minnesota and notice of right to cancel private mortgage insurance is required under federal law, no notice under this subdivision is required.

Subd. 4. **Servicer response to cancellation request.** (a) Within 30 days of receipt of a mortgagor's written request to cancel private mortgage insurance, a servicer shall:

(1) provide a written notice to the insurer to cancel the private mortgage insurance and written notice to the mortgagor that a request for cancellation has been sent to the insurer if the servicer determines that the private mortgage insurance should be canceled;

(2) provide a written response to the mortgagor identifying all additional information needed from the mortgagor if the servicer reasonably needs more information from the mortgagor to determine whether the mortgagor is eligible for cancellation of private mortgage insurance; or

(3) provide a written notice to the mortgagor of the reasons for the servicer's refusal to cancel the private mortgage insurance if the servicer determines that the mortgagor does not meet the requirements for cancellation of private mortgage insurance.

(b) If a lender, or any other person involved in the mortgage transaction, receives a written request for cancellation of private mortgage insurance, the lender or other person shall promptly forward the mortgagor's request for cancellation to the servicer, if the servicer is known to the lender or other person. If the servicer is not known to the lender or other person,

the lender or other person shall advise the mortgagor to contact the company to which the mortgagor sends the monthly payment.

Subd. 5. Lender charges; return of unearned premium. (a) A lender requiring or offering private mortgage insurance shall make available to the borrower or other person paying the insurance premium the same premium payment plans as are available to the lender in paying the private mortgage insurance premium.

(b) Any refund or rebate for unearned private mortgage insurance premiums shall be paid to the mortgagor or other person actually providing the funds for payment of the premium.

(c) A lender or servicer shall not charge the mortgagor a fee or other consideration for cancellation of the private mortgage insurance or for any of the acts required by this section, except that the lender or servicer shall have the right to recover the cost of an appraisal if the mortgagor elects to have the lender or servicer perform or arrange for the appraisal.

Subd. 6. Interpretation. Nothing in this section shall be deemed to be inconsistent with the federal Homeowner's Protection Act of 1998, codified at United States Code, title 12, sections 4901 to 4910, within the meaning of "inconsistent" as used in section 9 of that act, codified at United States Code, title 12, section 4908.

History: 1999 c 151 s 11

47.27 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1998]

Subd. 3. "Savings association" shall have the meaning set forth in section 51A.02, subdivision 7.

[For text of subd 4, see M.S.1998]

History: 1999 c 151 s 12

47.52 AUTHORIZATION.

(a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain detached facilities provided the facilities are located within: (1) the municipality in which the principal office of the applicant bank is located; or (2) 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or (3) a municipality in which no bank is located at the time of application; or (4) a municipality having a population of more than 10,000; or (5) a municipality having a population of 10,000 or less, as determined by the commissioner from the latest available data from the state demographer, or for municipalities located in the seven-county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.

(b) A detached facility shall not be closer than 50 feet to a detached facility operated by any other bank and shall not be closer than 100 feet to the principal office of any other bank, the measurement to be made in the same manner as provided above. This paragraph shall not be applicable if the proximity to the facility or the bank is waived in writing by the other bank and filed with the application to establish a detached facility.

(c) A bank is allowed, in addition to other facilities, part-time deposit-taking locations at elementary and secondary schools located within the municipality in which the main banking house or a detached facility is located if they are established in connection with student education programs approved by the school administration and consistent with safe, sound banking practices.

(d) In addition to other facilities, a bank may operate part-time locations at nursing homes and senior citizen housing facilities located within the municipality in which the main banking house or a detached facility is located, if they are operated in a manner consistent with safe, sound banking practices.

History: 1999 c 151 s 13

47.54 NOTICES AND APPROVAL PROCEDURES.

[For text of subd 1, see M.S.1998]

Subd. 2. **Approval order.** If no objection is received by the commissioner within 15 days after the publication and mailing of the notices, the commissioner shall issue an order approving the application without a hearing if it is found that (a) the applicant bank meets current industry standards of capital adequacy, management quality, and asset condition, (b) the establishment of the proposed detached facility will improve the quality or increase the availability of banking services in the community to be served, and (c) the establishment of the proposed detached facility will not have an undue adverse effect upon the solvency of existing financial institutions in the community to be served. Otherwise, the commissioner shall deny the application. Any proceedings for judicial review of an order of the commissioner issued under this subdivision without a contested case hearing shall be conducted pursuant to the provisions of the Administrative Procedure Act relating to judicial review of agency decisions, sections 14.63 to 14.69, and the scope of judicial review in such proceedings shall be as provided therein. Nothing herein shall be construed as requiring the commissioner to conduct a contested case hearing if no written objection is timely received by the commissioner from a bank within three miles of the proposed location of the detached facility.

Subd. 3. **Objections; hearing.** If any bank within three miles of the proposed location of the detached facility objects in writing within 15 days, the commissioner shall consider the objection. If the objection also requests a hearing, the objector must include the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the commissioner. Comments challenging the legality of an application should be submitted separately in writing.

Written requests for hearing must be evaluated by the commissioner who may grant or deny the request. A hearing must generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the commissioner.

If a request for a hearing has been denied, the commissioner shall notify the applicant and all interested persons stating the reasons for denial. Interested parties may submit to the commissioner with simultaneous copies to the applicant additional written comments on the application within 14 days after the date of the notice of denial. The applicant shall be provided an additional seven days after the 14-day deadline has expired within which to respond to any comments submitted within the 14-day period. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested parties. The commissioner may waive the additional seven-day comment period if so requested by the applicant.

[For text of subds 4 to 6, see M.S.1998]

History: 1999 c 151 s 14,15

47.59 FINANCIAL INSTITUTION CREDIT EXTENSION MAXIMUM RATES.

[For text of subds 1 to 11, see M.S.1998]

Subd. 12. **Consumer protections.** (a) Financial institutions shall comply with the requirements of the federal Truth in Lending Act, United States Code, title 15, sections 1601 to 1693, as the same may be amended from time to time, in connection with a consumer loan or credit sale for a consumer purpose where the federal Truth in Lending Act is applicable. A financial institution shall give the following disclosure to the borrower in writing at the time an open-end credit account is established if the financial institution imposes a loan fee, points, or similar charge that relates to the opening of the account which is not included in the annual percentage rate given pursuant to the federal Truth in Lending Act: "YOU HAVE BEEN ASSESSED FINANCE CHARGES, OR POINTS, WHICH ARE NOT INCLUDED IN THE ANNUAL PERCENTAGE RATE. THESE CHARGES MAY BE REFUNDED, IN WHOLE OR IN PART, IF YOU DO NOT USE YOUR LINE OF CREDIT OR IF YOU REPAY YOUR LINE OF CREDIT EARLY. THESE CHARGES INCREASE THE COST OF YOUR CREDIT."

(b) Financial institutions shall comply with the following consumer protection provisions in connection with a consumer loan or credit sale for a consumer purpose: sections 325G.02 to 325G.05; 325G.06 to 325G.11; 325G.15 to 325G.22; and 325G.29 to 325G.36, and Code of Federal Regulations, title 12, part 535, where those statutes or regulations are applicable.

(c) An assignment of a consumer's earnings by the consumer to a financial institution as payment or as security for payment of a debt arising out of a consumer loan or consumer credit sale is unenforceable by the financial institution except where the assignment: (1) by its terms is revocable at the will of the consumer; (2) is a payroll deduction plan or preauthorized payment plan, beginning at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or (3) applies only to wages or other earnings already earned at the time of the assignment.

[For text of subds 13 and 14, see M.S.1998]

History: 1999 c 151 s 16

47.60 CONSUMER SMALL LOANS.

[For text of subds 1 and 2, see M.S.1998]

Subd. 3. **Filing.** Before a person other than a financial institution as defined by section 47.59 engages in the business of making consumer small loans, the person shall file with the commissioner as a consumer small loan lender. The filing must be on a form prescribed by the commissioner together with a fee of \$250 for each place of business and contain the following information in addition to the information required by the commissioner:

(1) evidence that the filer has available for the operation of the business at the location specified, liquid assets of at least \$50,000; and

(2) a biographical statement on the principal person responsible for the operation and management of the business to be certified.

Revocation of the filing and the right to engage in the business of a consumer small loan lender is the same as in the case of a regulated lender license in section 56.09.

[For text of subds 4 to 6, see M.S.1998]

History: 1999 c 151 s 17