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46.04 BANKING DIVISION

cordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. None of the above provisions shall limit the commissioner in making additional examinations as he deems necessary or advisable. He shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. He may make such requirements as to records as he deems necessary to facilitate the carrying out of his duties and to properly protect the public interest. He may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any such financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued by him or under his direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to his official duties, the commissioner of banks has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make such returns and reports to the commissioner of banks as he may require; attend and answer, under oath, his lawful inquiries; produce and exhibit such books, accounts, documents, and property as he may desire to inspect, and in all things aid him in the performance of his duties.

[1979 c 229 s 1]

CHAPTER 47. FINANCIAL CORPORATIONS

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47.20 Use of federal acts; definitions; interest rates; required provisions; interest on escrow accounts; penalty.

[For text of subd 1, see M.S.1978]

Subd. 2. 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 loan.

(d) Appraisal and survey of real property securing a conventional loan.

(e) A single service charge, which shall include 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 loan, and shall also include 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 such commitment. The term service charge shall not include forward commitment fees. The service charge shall not

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exceed one percent of the original bona fide principal amount of the conventional 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 because 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 property securing a conventional loan or the closing of a conventional loan paid by the borrower and received by any party other than the lender.

(2) "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 non-corporate 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. The term mortgage shall not include contracts for deed or installment land contracts.

(3) "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 apartments as defined in section 515.02 to be created out of existing structures pursuant to the Minnesota condominium act, 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.

(4) "Borrower's interest rate commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees that, if a conventional loan is made following issuance of and pursuant to the commitment, the conventional 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.

(5) "Borrower's loan commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees to make a conventional 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 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 such 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.

(6) "Finance charge" means the total cost of a conventional loan including extensions or grant of credit regardless of the characterization of the same and includes interest, finders fees, and other charges levied by a lender directly or indirectly against the person obtaining the conventional loan or against a seller of real property securing a conventional 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 loan.

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(7) "Lender" means any person making a conventional loan, or any person arranging financing for a conventional loan. The term shall also include the holder or assignee at any time of a conventional loan.

(8) "Loan yield" means the annual rate of return obtained by a lender over the term of a conventional 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, 12 C.F.R. section 226, but using the definition of finance charge provided for in this subdivision.

(9) "Monthly index of long term United States government bond yields" means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over the counter market for all outstanding United States treasury bond issues, based on available statistics, which are either maturing or callable in ten years or more. This index is expressed in terms of percentage interest per annum.

(10) "Monthly index of the federal national mortgage association auction yields" means the gross weighted average yield of accepted offers in the second free market system conventional home mortgage auction held by the federal national mortgage association in a month.

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

(12) "Residential unit" means any structure used principally for residential purposes or any portion thereof, and shall include a unit in a townhouse or planned unit development, a condominium apartment, a non-owner occupied residence, and any other type of residence regardless of whether such unit is used as a principal residence, secondary residence, vacation residence or residence of some other denomination.

Subd. 3. Notwithstanding the provisions of section 334.01, lenders are authorized to make conventional loans and purchases of obligations representing conventional loans pursuant to such rules as the commissioner of banks finds to be necessary and proper, if any, at an interest rate not in excess of the maximum lawful interest rate prescribed in subdivision 4 or 4a.

Subd. 4. No conventional loan shall be made at a rate of interest or loan yield in excess of a maximum lawful interest rate which shall be based upon the monthly index of long term United States government bond yields as compiled by the United States treasury department and published by the department in the monthly treasury bulletin. The maximum lawful interest rate shall be computed as follows:

(1) The maximum lawful rate of interest for a conventional loan made or contracted for during any calendar month shall be equal to the monthly index of long term United States government bond yields for the second preceding calendar month plus an additional two percent per annum rounded off to the nearest quarter of one percent per annum or rounded off to the highest quarter of one percent per annum if equidistant.

(2) On or before the 20th day of each month the commissioner of banking shall determine, based on available statistics, the monthly index of long term United States government bond yields for the preceding calendar month and shall determine the maximum lawful rate of interest for conventional loans for the next succeeding month, as defined in clause (1) and shall cause the maximum lawful rate of interest to be published in a legal newspaper in Ramsey County on or before the 20th day of each month and in the state register on or before the last day of each month; the maximum lawful rate of interest to be effective on the first day of the next succeeding month.

(3) A contract rate within the maximum lawful interest rate applicable to a conventional loan at the time the loan is made shall be the maximum lawful interest rate for the term of the conventional loan.

(4) Conventional loans made pursuant to a borrower's interest rate commitment, or made pursuant to a borrower's loan commitment, or made pursuant to a commitment for conventional loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment, which commitment provides for consummation within some future time following the issuance of the commitment may be consummated pursuant to the provisions, including the interest rate, of the commitment notwithstanding the fact that the maximum lawful rate of interest at the time the conventional loan is actually made is less than the commitment rate of in-

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terest, provided the commitment rate of interest does not exceed the maximum lawful interest rate in effect on the date the commitment was issued. The refinancing of (a) an existing conventional loan, (b) a loan insured or guaranteed by the secretary of housing and urban development, the administrator of veterans affairs, or the administrator of the farmers home administration, or (c) a contract for deed by making a conventional loan shall be deemed to be a new conventional loan for purposes of determining the maximum lawful rate of interest under this subdivision. A borrower's interest rate commitment or a borrower's loan commitment shall be deemed to be issued on the date the commitment is hand delivered by the lender to, or mailed to the borrower. A forward commitment shall be deemed to be issued on the date the forward commitment is hand delivered by the lender to, or mailed to the person paying the forward commitment fee to the lender, or to any one of them if there should be more than one.

(5) A loan made pursuant to a borrower's interest rate commitment, or made pursuant to a borrower's loan commitment, or made pursuant to a forward commitment for conventional loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment, issued on or before July 31, 1983 at a rate of interest not in excess of the rate of interest authorized by this subdivision at the time the commitment was made shall continue to be enforceable in accordance with its terms until the indebtedness is fully satisfied.

(6) This subdivision expires July 31, 1983.

Subd. 4a. No conventional loan shall be made at a rate of interest or loan yield in excess of a maximum lawful interest rate which shall be based upon the monthly index of the federal national mortgage association auction yields as compiled by the federal national mortgage association. The maximum lawful interest rate shall be computed as follows:

(1) The maximum lawful rate of interest for a conventional loan made or contracted for during any calendar month shall be equal to the monthly index of the federal national mortgage association auction yields for the first preceding calendar month rounded off to the next highest quarter of one percent per annum.

(2) On or before the last day of each month the commissioner of banking shall determine, based on available statistics, the monthly index of the federal national mortgage association auction yields for that calendar month and shall determine the maximum lawful rate of interest for conventional loans for the next succeeding month, as defined in clause (1) and shall cause the maximum lawful rate of interest to be published in a legal newspaper in Ramsey County on or before the first day of each month or as soon thereafter as practicable and in the state register on or before the last day of each month; the maximum lawful rate of interest to be effective on the first day of that month. If a federal national mortgage association free market system conventional home mortgage auction is not held in any month, the maximum lawful rate of interest determined by the commissioner of banks pursuant to the last auction shall be the maximum lawful rate of interest through the last day of the month in which the next auction is held.

(3) A contract rate within the maximum lawful interest rate applicable to a conventional loan at the time the loan is made shall be the maximum lawful interest rate for the term of the conventional loan.

(4) Conventional loans made pursuant to a borrower's interest rate commitment or made pursuant to a borrower's loan commitment, or made pursuant to a commitment for conventional loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment, which commitment provides for consummation within some future time following the issuance of the commitment may be consummated pursuant to the provisions, including the interest rate, of the commitment notwithstanding the fact that the maximum lawful rate of interest at the time the conventional loan is actually made is less than the commitment rate of interest, provided the commitment rate of interest does not exceed the maximum lawful interest rate in effect on the date the commitment was issued. The refinancing of (a) an existing conventional loan, (b) a loan insured or guaranteed by the secretary of housing and urban development, the administrator of veterans affairs, or the administrator of the farmers home administration, or (c) a contract for deed by making a conventional loan shall be deemed to be a new conventional loan for purposes of determining the maxi-

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imum lawful rate of interest under this subdivision. A borrower's interest rate commitment or a borrower's loan commitment shall be deemed to be issued on the date the commitment is hand delivered by the lender to, or mailed to the borrower. A forward commitment shall be deemed to be issued on the date the forward commitment is hand delivered by the lender to, or mailed to the person paying the forward commitment fee to the lender, or to any one of them if there should be more than one.

(5) A loan made pursuant to a borrower's interest rate commitment, or made pursuant to a borrower's loan commitment, or made pursuant to a forward commitment for conventional loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment, issued on or before November 30, 1982, at a rate of interest not in excess of the rate of interest authorized by this subdivision at the time the commitment was made shall continue to be enforceable in accordance with its terms until the indebtedness is fully satisfied.

(6) This subdivision supersedes subdivision 4 from May 31, 1979 until November 30, 1982.

(7) This subdivision expires November 30, 1982.

[For text of subd 5, see M.S.1978]

Subd. 6. If the purpose of a conventional loan is to enable a borrower to purchase a one to four family dwelling for his or her primary residence, the lender shall consent to the subsequent transfer of the real estate if the existing borrower continues after transfer to be obligated for repayment of the entire remaining indebtedness. The lender shall release the existing borrower from all obligations under the loan instruments, if the transferee (1) meets the standards of credit worthiness normally used by persons in the business of making conventional loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the real estate used as collateral, and (2) executes an agreement in writing with the lender whereby the transferee assumes the obligations of the existing borrower under the loan instruments. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument. A lender may charge a fee not in excess of one-tenth of one percent of the remaining unpaid principal balance in the event the loan or advance of credit is assumed by the transferee and the existing borrower continues after the transfer to be obligated for repayment of the entire assumed indebtedness. A lender may charge a fee not in excess of one percent of the remaining unpaid principal balance in the event the remaining indebtedness is assumed by the transferee and the existing borrower is released from all obligations under the loan instruments.

Subd. 7. (1) No conventional loan made on or after the effective date of Laws 1977, Chapter 350 and prior to May 31, 1979 shall contain a provision requiring or permitting the imposition, directly or indirectly, of any discount points, whether or not actually denominated as discount points, on any person. Conventional loans made on or after May 31, 1979 may contain provisions permitting discount points, if the loan does not provide a loan yield in excess of that permitted by subdivision 4 or 4a. The loan yield is computed using the amount resulting when the discount points are included in the finance charge.

(2) Forward commitment fees are not discount points within the meaning of this subdivision.

(3) No charges, fees, or sums permitted by this section which are paid to and received by a lender may be increased for purposes of evading compliance with this subdivision.

[For text of subd 8, see M.S.1978]

Subd. 9. (1) For purposes of this subdivision the term "mortgagee" shall mean all state banks and trust companies, national banking associations, state and federally chartered savings and loan associations, mortgage banks, mutual savings banks, insurance companies, credit unions or assignees of the above. Each mortgagee requiring funds of a mortgagor to be paid into an escrow, agency or similar account for the payment of taxes or insurance premiums with respect to a mortgaged one to four family, owner occupied

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residence located in this state, unless the account is required by federal law or regulation or maintained in connection with a conventional loan in an original principal amount in excess of 80 percent of the lender's appraised value of the residential unit at the time the loan is made or maintained in connection with loans 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, shall calculate interest on such funds at a rate of not less than five percent per annum. Such interest shall be computed on the average monthly balance in such account on the first of each month for the immediately preceding 12 months of the calendar year or such other fiscal year as may be uniformly adopted by the mortgagee for such purposes and shall be annually credited to the remaining principal balance on the mortgage, or at the election of the mortgagee, paid to the mortgagor or credited to his account. If the interest exceeds the remaining balance, the excess shall be paid to the mortgagor or vendee. The requirement to pay interest shall apply to such accounts created prior to June 1, 1976 as well as to accounts created after June 1, 1976.

(2) A mortgagee offering the following option (c) to a mortgagor but not requiring maintenance of escrow accounts as described in clause (1), whether or not the accounts were required by the mortgagee or were optional with the mortgagor, shall offer to each of such mortgagors the following options:

(a) the mortgagor may manage the payment of insurance and taxes by himself;

(b) the mortgagor may open with the mortgagee a passbook savings account carrying the current rate of interest being paid on such accounts by the mortgagee in which the mortgagor can deposit the funds previously paid into the escrow account; or

(c) the mortgagor may elect to maintain a non-interest bearing escrow account as described in clause (1) to be serviced by the mortgagee at no charge to the mortgagor.

A mortgagee that is not a depository institution offering passbook savings accounts shall instead of offering option (b) above notify its mortgagors (1) that they may open such accounts at a depository institution and (2) of the current maximum legal interest rate on such accounts.

A mortgagee offering option (c) above to a mortgagor but not requiring the maintenance of escrow accounts shall notify its mortgagor of the options under (a), (b) and (c). The notice shall state the option and state that an escrow account is not required by the mortgagee, that the mortgagor is legally responsible for the payment of taxes and insurance, and that the notice is being given pursuant to this subdivision.

Notice shall be given within 30 days after the effective date of the provisions of Laws 1977, Chapter 350 amending the subdivision, as to mortgagees offering option (c) above to mortgagors but not requiring escrow accounts as of the effective date, or within 30 days after a mortgagee's decision to discontinue requiring escrow accounts if the mortgagee continues to offer option (c) above to mortgagors. If no reply is received within 30 days, option (c) shall be selected for the mortgagor but the mortgagor may, at any time, select another option.

A mortgagee making a new mortgage and offering option (c) above to a prospective mortgagor shall, at the time of loan application, notify the prospective mortgagor of options (a), (b) and (c) above which must be extended to the prospective mortgagor. The mortgagor shall select one of the options at the time the loan is made.

Any notice required by this clause (2) shall be on forms approved by the commissioner of banking and shall provide that at any time a mortgagor may select a different option. The form shall contain a blank where the current passbook rate of interest shall be entered by the mortgagee. Any option selected by the mortgagor shall be binding on the mortgagee.

This clause (2) does not apply to escrow accounts which are excepted from the interest paying requirements of clause (1).

(3) A mortgagee shall be prohibited from charging a direct fee for the administration of the escrow account.

(4) A mortgagee shall make timely payments of tax and insurance bills provided that funds paid into the account by the mortgagor are sufficient for the payment. If there is a shortage of funds the mortgagee shall promptly notify the mortgagor of the

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shortage. Failure to make the payment required by this clause shall subject the mortgagee to liability for all damages caused by the failure except that this sentence shall not deprive the mortgagee of the right to present any legal defenses in any subsequent proceeding. The mortgagee is permitted to make any payment on behalf of the mortgagor even though there are not sufficient funds in a particular account to cover the payment.

[For text of subds 10 to 12, see M.S.1978]

Subd. 13. Any conventional loan having an interest rate or loan yield in excess of the maximum lawful interest rate provided for in subdivision 4 or 4a as applicable shall be usurious and subject to the same penalties as a loan made in violation of section 334.01. Any lender intentionally violating any other provision of this section shall be fined not more than \$100 for each offense.

Subd. 14. (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 borrower or other person actually providing the funds for payment of the premium.

[1979 c 48 s 1,3; 1979 c 279 s 1-8]

NOTE: Subdivision 6 was also amended by Laws 1979, Chapter 48, Section 2 to read as follows:

"Subd. 6. If the purpose of a conventional loan is to enable a borrower to purchase a one to four family dwelling for his or her primary residence, the lender shall consent to the subsequent transfer of the real estate if the existing borrower continues after transfer to be obligated for repayment of the entire remaining indebtedness. The lender shall release the existing borrower from all obligations under the loan instruments, if the transferee (1) meets the standards of credit worthiness normally used by persons in the business of making conventional loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the real estate used as collateral, and (2) executes an agreement in writing with the lender whereby the transferee assumes the obligations of the existing borrower under the loan instruments. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument. A lender may charge a fee not in excess of one-tenth of one percent of the remaining unpaid principal balance in the event the loan or advance of credit is assumed by the transferee and the existing borrower continues after the transfer to be obligated for repayment of the entire assumed indebtedness. A lender may charge a fee not in excess of one percent of the remaining unpaid principal balance in the event the remaining indebtedness is assumed by the transferee and the existing borrower is released from all obligations under the loan instruments. This subdivision shall apply to conventional loans made on or after August 1, 1979."

47.201 Variable mortgages.

Subdivision 1. **Definitions.** For the purposes of this section, the terms defined in this subdivision shall have the meanings given them:

(1) "Financial institution" means a state bank or trust company, a national banking association, a state or federally chartered savings and loan association, a mortgage bank or mutual savings bank.

(2) "Graduated payment home loan" means a conventional loan made pursuant to section 47.20 and subject to the provisions therein, whereunder initial periodic repayments are lower than those under the standard conventional loan having equal periodic repayments, and gradually rise to a predetermined point after which they remain constant.

Subd. 2. **Authorization.** Notwithstanding the provisions of sections 334.01, subdivision 1, and 51A.37, subdivision 3, clause (d), any financial institution is authorized to make graduated payment home loans and purchases representing graduated payment home loans pursuant to such rules as the commissioner of banks finds to be necessary and proper, if any, at an interest rate not in excess of the maximum lawful interest rate prescribed in section 47.20, subdivision 4. Notwithstanding the provisions of section 334.01, subdivision 1, where initial repayments of a graduated payment home loan are less than the total accrued outstanding interest, the excess accrued and unpaid interest may be added to the outstanding loan balance on which interest accrues at the contracted rate.

Subd. 3. **Graduated payments.** A mortgage may provide that periodic repayments of principal and interest on variable payment loans may increase in amounts not exceeding the following:

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- (a) 7.5 percent annually during a period of five years or less;
- (b) 6.5 percent annually during a period of six years;
- (c) 5.5 percent annually during a period of seven years;
- (d) 4.5 percent annually during a period of eight years;
- (e) 3.5 percent annually during a period of nine years; and
- (f) 3 percent annually during a period of ten years.

No mortgage may provide for principal and interest increases after its first ten years. The increases in payments of principal and interest provided in clauses (a) to (f) are independent and one graduation period may not be used in conjunction with another period.

Subd. 4. Changes restricted. Payments of principal and interest may not be changed more than once a year. The first change may not occur until one year after the date of the first payment under the mortgage.

Subd. 5. Conversion rights. Borrowers taking a mortgage with graduated payments shall have the right to convert, at a time chosen by the borrower, to a standard nongraduated payment mortgage. No assessment or penalties shall be made if the borrower chooses to convert at the interest rate and outstanding principal of the graduated payment mortgage.

Subd. 6. Disclosure. Each prospective borrower shall receive materials explaining in reasonably simple terms the graduated payment mortgage offered and a comparable standard mortgage instrument with a fixed interest rate and level payments. The material shall include:

- (a) A comparison of the terms of the graduated payment mortgage and a standard mortgage;
- (b) Payment schedules for both types of instruments and the total payment in dollars over the full term of the loan;
- (c) A description of the conversion option; and
- (d) A prominent statement that borrowers have the option to elect a standard mortgage instrument.

Subd. 7. Savings and loan associations; first lien. Capitalization of interest resulting from any negative amortization of a graduated payment home loan made by a savings and loan association shall not change the status of the mortgage as a first lien against the property securing the loan pursuant to section 51A.38, subdivision 5. The capitalization of interest in a negative amortization shall not be considered as a loan or debt separate from the graduated payment mortgage contracted for at the time of loan origination.

[1979 c 239 s 1]

47.51 Detached banking facilities; definitions.

As used in sections 47.51 to 47.57:

“Extension of the main banking house” means any structure or stationary mechanical device serving as a drive-in or walk-up facility, or both, which is located within 150 feet of the main banking house, the distance to be measured in a straight line from the closest points of the closest structures involved and which performs one or more of the functions described in section 47.53.

“Detached facility” means any permanent structure, office accommodation located within the premises of any existing commercial or business establishment, stationary automated remote controlled teller facility, stationary unmanned cash dispensing or receiving device, located separate and apart from the main banking house which is not an “extension of the main banking house” as above defined, that serves as a drive-in or walk-up facility, or both, with one or more tellers windows, or as a remote controlled teller facility or a cash dispensing or receiving device, and which performs one or more of those functions described in section 47.53.

“Bank” means a bank as defined in section 45.08 and any banking office established prior to the effective date of Laws 1923, Chapter 170, Section 1.

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"Commissioner" means the commissioner of banks.

"Municipality" means the geographical area encompassing the boundaries of any home rule charter or statutory city located in this state, and any detached area, pursuant to section 473.625, operated as a major airport by the metropolitan airports commission pursuant to sections 473.601 to 473.679.

[1979 c 220 s 1]

47.54 Notices and approval procedures.

[For text of subs 1 to 3, see M.S.1978]

Subd. 4. If upon the hearing, it appears to the commissioner that the requirements for approval contained in subdivision 2 have been met, he shall, not later than 90 days after the hearing, and after the applicant has otherwise complied with the provisions of law applicable to the establishment of a facility, issue the certificate of authorization. If a facility is not activated within 18 months from the date of issue of the certificate, the certificate shall automatically expire. If the commissioner's order is appealed, the commissioner may grant such reasonable extensions of time as he deems necessary, but the extensions may not exceed a total of 18 months from the date on which all appeals or rights of appeal from the commissioner's order have concluded or expired. At the expiration of the extensions, the order and certificate shall automatically expire. If the commissioner shall decide that the application should not be granted, he shall issue his order to that effect and forthwith give notice by certified mail to the applicant.

[1979 c 64 s 1]

47.58 Reverse mortgage loans.

Subdivision 1. **Definitions.** For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Reverse mortgage loan" means a loan:

(1) Made to a borrower wherein the committed principal amount is paid to the borrower in equal or unequal installments over a period of months or years, interest is assessed, and authorized closing costs are incurred as specified in the loan agreement;

(2) Which is secured by a mortgage on residential property owned solely by the borrower; and

(3) Which is due when the committed principal amount has been fully paid to the borrower, or upon sale of the property securing the loan, or upon the death of the last surviving borrower, or upon the borrower terminating use of the property as principal residence so as to disqualify the property from the homestead credit given in chapter 290A.

(b) "Lender" means any bank subject to chapter 48, savings bank organized and operated pursuant to chapter 50, savings and loan association subject to chapter 51A, or any insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes any federally chartered bank supervised by the comptroller of the currency or federally chartered savings and loan association supervised by the federal home loan bank board, to the extent permitted by federal law.

(c) "Borrower" includes any natural person holding an interest in severalty or as joint tenant or tenant-in-common in the property securing a reverse mortgage loan.

(d) "Outstanding loan balance" means the current net amount of money owed by the borrower to the lender whether or not that sum is suspended pursuant to the terms of the reverse mortgage loan agreement or is immediately due and payable. The outstanding loan balance is calculated by adding the current totals of the items described in clauses (1) to (5) and subtracting the current totals of the item described in clause (6):

(1) The sum of all payments made by the lender which are necessary to clear the property securing the loan of any outstanding mortgage encumbrance or mechanics or materialmen's lien.

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(2) The total disbursements made by the lender to date pursuant to the loan agreement as formulated in accordance with subdivision 3.

(3) All taxes, assessments, insurance premiums and other similar charges paid to date by the lender pursuant to subdivision 6, which charges were not reimbursed by the borrower within 60 days.

(4) All actual closing costs which the borrower has deferred, if a deferral provision is contained in the loan agreement as authorized by subdivision 7.

(5) The total accrued interest to date, as authorized by subdivision 5.

(6) All payments made by the borrower pursuant to subdivision 4.

(e) "Actual closing costs" mean reasonable charges or sums ordinarily paid at the time of closing for the following, whether or not retained by the lender:

(1) Any insurance premiums on policies covering the mortgaged property including but not limited to premiums for title insurance, fire and extended coverage insurance, flood insurance, and private mortgage insurance.

(2) Abstracting, title examination and search, and examination of public records related to the mortgaged property.

(3) The preparation and recording of any or all documents required by law or custom for closing a reverse mortgage loan agreement.

(4) Appraisal and survey of real property securing a reverse mortgage loan.

(5) A single service charge, which service charge shall include any consideration, not otherwise specified in this section as an "actual closing cost", paid by the borrower to the lender for or in relation to the acquisition, making, refinancing or modification of a reverse mortgage loan, and shall also include any consideration received by the lender for making a commitment for a reverse mortgage loan, whether or not an actual loan follows the commitment. The service charge shall not exceed one percent of the bona fide committed principal amount of the reverse mortgage loan.

(6) Charges and fees necessary for or related to the transfer of real property securing a reverse mortgage loan or the closing of a reverse mortgage loan agreement paid by the borrower and received by any party other than the lender.

Subd. 2. **Authorization.** Pursuant to rules which the commissioner of banks or commissioner of insurance may find to be necessary and proper, if any, and subject to federal laws and regulations, lenders may make investments in reverse mortgage loans and purchases of obligations representing reverse mortgage loans, provided the aggregate total of committed principal of the investment in reverse mortgage loans by any bank, savings bank, or savings and loan association, does not exceed five percent of that lender's total deposits and savings accounts. This limitation shall be determined at each June 30 and December 31 for the following six month period. Any decline in the total of deposits and savings accounts subsequent to a determination may be disregarded. Security for loans made under this section shall be a first lien on residential property (a) which the borrower occupies as principal residence and which qualifies for a homestead credit pursuant to section 273.13, and (b) to which the borrower alone has title.

Subd. 3. **Payment; repayment; amount.** The committed principal amount of a reverse mortgage loan shall be paid to the borrower over the period of months or years as specified in the loan agreement. The borrower and lender may, by written agreement, amend the loan agreement from time to time. Pursuant to the terms of the contract the borrower shall make repayment to the lender:

(a) Upon payment to the borrower of the final installment unless, by written agreement between the borrower and lender whereunder the borrower agrees to periodically pay the lender interest accruing on the outstanding loan balance, repayment of the outstanding loan balance is postponed until default in payment of interest or until the occurrence of any of the events specified in clauses (b) to (e);

(b) Upon sale of the property securing the loan;

(c) Upon the death of the last surviving borrower;

(d) Upon the borrower terminating use of the property as principal residence so as to disqualify the property from the homestead credit given in section 273.13; or

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(e) Upon renegotiation of the terms of the reverse mortgage loan agreement, unless the parties agree in writing to postpone repayment.

Except as otherwise provided in this subdivision, the outstanding loan balance as projected by the lender to the anticipated time of payment to the borrower of the final installment of committed principal shall not exceed 80 percent of the appraised value of the property at inception of the loan. If upon reappraisal of the property made at any time during the term of the loan, the projected outstanding loan balance does not exceed 70 percent of the reappraised value of the property, the schedule of the lender's installment payments may be extended and the amount of the committed principal amount increased, provided the revised outstanding loan balance at payment of the lender's final installment of committed principal does not exceed 80 percent of the reappraised value of the property.

Subd. 4. **Extension; early repayment.** The installments may be extended by written agreement of the parties and repayment or partial repayment of the outstanding loan balance may be made at any time without penalty, except that partial repayment may be made not more often than once per year and in no amount less than \$1,000. The borrower may cancel the reverse mortgage loan at any time without penalty by payment of the outstanding loan balance.

Subd. 5. **Interest.** Notwithstanding the provisions of section 334.01, subdivision 1, lenders may make reverse mortgage loans and purchases of obligations representing reverse mortgage loans, at an interest rate or loan yield not in excess of the maximum lawful interest rate prescribed for conventional loans by section 47.20, subdivision 4. If section 47.20, subdivision 4 expires, the interest rate last published pursuant to the provisions of section 47.20, subdivision 4 shall be the maximum lawful interest rate for reverse mortgage loans. A contract rate within the maximum lawful interest rate applicable to a reverse mortgage loan at the time the loan is made shall be the maximum lawful interest rate for the term of the reverse mortgage loan.

Notwithstanding the provisions of section 334.01, subdivision 1, a reverse mortgage loan agreement may provide that interest will be added to the outstanding loan balance monthly as it accrues, with interest accruing on the outstanding loan balance at a rate not to exceed the rate of interest permitted under this subdivision at the time of the signing of the original loan agreement or any subsequent extension agreement.

Subd. 6. **Taxes; insurance.** The borrower shall pay real estate taxes, assessments and insurance premiums on the property securing the loan, and the lender may require the borrower to provide evidence of payment. If the borrower does not make timely payment the lender may pay taxes, assessments, insurance premiums and other similar charges for the protection of the property securing its loan and may add these payments to the outstanding loan balance if not repaid by the borrower within 60 days after the borrower receives notice that the lender has made the payment.

Subd. 7. **Loan closing.** The lender may require the borrower to pay no more than actual closing costs incurred in connection with the making, closing, disbursing or extending of a reverse mortgage loan. A reverse mortgage loan agreement or extension agreement may provide for deferral of payment of any portion of actual closing costs. Deferred closing costs shall be added to the outstanding loan balance as provided in subdivision 1, clause (e). Unless the agreement provides for deferral, actual closing costs shall be paid by the borrower at the time of signing the agreement.

Upon signing a reverse mortgage loan agreement or extension agreement the lender shall furnish to the borrower:

(a) A schedule showing the projected pattern of the outstanding loan balance over the period of the agreement;

(b) A statement indicating in detail the charges and fees the borrower has paid or obligated himself to pay to the lender or to any other person in connection with the loan; and

(c) Any other information required by state or federal law.

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