

CHAPTER 47

FINANCIAL CORPORATIONS

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47.016 DISPOSITION OF CREDIT INSURANCE INCOME.

Subdivision 1. **Definitions.** (a) For the purpose of this section, the following terms have the meanings given them.

(b) "Credit insurance" means credit life and accident and health insurance as defined in section 62B.02.

(c) "Officer," "director," "employee," and "shareholder" include the spouse and minor children of the officer, director, employee, or shareholder.

(d) "Interest" includes ownership through a spouse or minor children; ownership through a broker, nominee, or agent; and ownership through a corporation, partnership, association, joint venture, or proprietorship.

(e) "Financial institution" means any person who lends money and sells credit insurance to the borrower.

Subd. 2. **Scope and purpose.** This section applies to sales of credit insurance by employees, officers, directors, and shareholders of a financial institution and by corporations, partnerships, associations, and other entities in which these persons have an interest. The purposes of this section are (1) to prohibit employees, officers, directors, members, and shareholders of financial institutions from benefiting personally on the sale of credit insurance to loan customers and (2) to encourage marketing of credit insurance through the use of financial facilities only under arrangements which assure that employees, officers, directors, and shareholders do not receive benefits not shared with all stockholders or members of the financial institution.

Subd. 3. **Distribution of credit insurance income.** No employee, officer, director, or shareholder of a financial institution, nor a corporation, partnership, association, or other entity in which these persons have an interest, may retain commissions or other income from the sale of credit insurance in connection with a loan made by the financial institution. All such income received by these persons or by a corporation, partnership, association, or other entity in which these persons have an interest, must be turned over to the financial institution. Nothing in this section prohibits a financial institution from receiving the income directly in the form of commissions or as compensation for use of its premises, personnel, and good will.

History: 1983 c 250 s 8

47.20 USE OF FEDERAL ACTS; DEFINITIONS; INTEREST RATES; REQUIRED PROVISIONS; INTEREST ON ESCROW ACCOUNTS; PENALTY.

[For text of subd 1, see M.S.1982]

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 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 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 association organized under sections 308.05 to 308.18 or chapter 317, 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 apartments as defined in section 515.02 to be created out of existing structures pursuant to the Minnesota Condominium Act, 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, finders 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, 12 C.F.R. 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) "Monthly index of the federal home loan mortgage corporation auction yields" means the net weighted average yield of accepted offers in the eight month forward commitment program of the federal home loan mortgage corporation in a month.

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

(14) "Residential unit" means any structure used principally for residential purposes or any portion thereof, and includes a unit in a townhouse or planned unit development, a condominium apartment, 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.

(15) "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 subd 3, see M.S.1982]

Subd. 4a. **Maximum interest rate.** No conventional or cooperative apartment loan or contract for deed 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 home loan mortgage corporation auction yields as compiled by the federal home loan mortgage corporation. The maximum lawful interest rate shall be computed as follows:

(1) The maximum lawful rate of interest for a conventional or cooperative apartment loan or contract for deed made or contracted for during any calendar month is equal to the monthly index of the federal home loan mortgage corporation auction yields for the first preceding calendar month plus an additional three-eighths of one percent per annum 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 home loan mortgage corporation auction yields for that calendar month and shall determine the maximum lawful rate of interest for conventional or cooperative apartment loans or contracts for deed 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 home loan mortgage corporation eight month forward commitment purchase program is not held in any month, the maximum lawful rate of interest determined by the commissioner of banks pursuant to the last auction is the maximum lawful rate of interest through the last day of the month in which the next auction is held.

(3) The maximum lawful interest rate applicable to a cooperative apartment loan or contract for deed at the time the loan or contract is made is the maximum lawful interest rate for the term of the cooperative apartment loan or contract for deed. Notwithstanding the provisions of section 334.01, a cooperative apartment loan or contract for deed may provide, at the time the loan or contract is made, for the application of specified different consecutive periodic interest rates to the unpaid principal balance, if no interest rate exceeds the maximum lawful interest rate applicable to the loan or contract at the time the loan or contract is made.

(4) Contracts for deed executed pursuant to a commitment for a contract for deed, or conventional or cooperative apartment 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 or cooperative apartment 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 contract for deed or conventional or cooperative apartment loan is actually executed or 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 or cooperative apartment 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 or cooperative apartment loan is deemed to be a new conventional or cooperative apartment loan

for purposes of determining the maximum lawful rate of interest under this subdivision. The renegotiation of a conventional or cooperative apartment loan or a contract for deed is deemed to be a new loan or contract for deed for purposes of clause (3) and 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 is deemed to be issued on the date the commitment is hand delivered by the lender to, or mailed to the borrower. A forward commitment is 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. A commitment for a contract for deed is deemed to be issued on the date the commitment is initially executed by the contract for deed vendor or his authorized agent.

(5) A contract for deed executed pursuant to a commitment for a contract for deed, or 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 or cooperative apartment loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment at a rate of interest not in excess of the rate of interest authorized by this subdivision at the time the commitment was made continues to be enforceable in accordance with its terms until the indebtedness is fully satisfied.

[For text of subds 4b to 6, see M.S.1982]

Subd. 6a. **Loan assumptions after May 8, 1981.** If the purpose of a conventional loan, or loan made pursuant to the authority granted in subdivision 1, clause (3) or (4), 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 and 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, (2) executes an agreement in writing with the lender whereby the transferee assumes the obligations of the existing borrower under the loan instruments, and (3) executes an agreement in writing to pay interest on the remaining obligation at a new interest rate not to exceed the lender's current market rate of interest on similar loans at the time of the transfer, the most recently published monthly index of the federal home loan mortgage corporation auction yields or the existing interest rate provided for by the terms of the note, whichever is greater. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument.

[For text of subds 6b to 14, see M.S.1982]

Subd. 15. Notwithstanding the provisions of any other law to the contrary, any notice of default on homestead property as defined in section 583.02, mailed after May 24, 1983 and prior to May 1, 1984, shall indicate that the borrower has 60 days from the date the notice is mailed in which to cure the default.

History: 1983 c 215 s 1; 1983 c 288 s 1-3

NOTE: Subdivision 15 was repealed by Laws 1983, chapter 215, section 16, effective July 1, 1984.

47.521 CLOSED BANK LOCATION; AUTHORIZATION.

Where the commissioner has determined that an existing state bank or national banking association is about to fail or has failed and it is in the public interest to prevent the loss of banking services in the community affected, the limitations on location and number of detached facilities in section 47.52 do not apply to an application to establish a detached facility in the same locality. In the event the commissioner has determined that it is necessary and in the public interest to act immediately on the application, the commissioner may waive the requirements of section 47.54.

History: 1983 c 242 s 2

47.54 NOTICES AND APPROVAL PROCEDURES.

Subdivision 1. Application. Any bank desiring to establish a detached facility shall execute and acknowledge a written application in the form prescribed by the commissioner and shall file the application in the commissioner's office with a fee of \$500. If an application is contested, 50 percent of an additional fee equal to the actual costs incurred by the commissioner in approving or disapproving the application, payable to the state treasurer and credited by the treasurer to the general fund, shall be paid by the applicant and 50 percent equally by the intervening parties. Thereupon the applicant shall publish a notice of the filing of the application in a newspaper published in the municipality in which the proposed detached facility is to be located, and if there is no such newspaper, then at the county seat of the county in which the facility is proposed to be located. The notice must be in the form prescribed by the commissioner and, in addition to the publication, the applicant must mail a copy of the notice by certified mail to every bank located within three miles of the proposed location of the detached facility, measured in the manner provided in section 47.52.

[For text of subds 2 to 4, see M.S.1982]

Subd. 5. Expiration and extension of order. If a facility is not activated within 18 months from the date of the order, the approval order automatically expires. Upon request of the applicant prior to the automatic expiration date of the order, the commissioner may grant reasonable extensions of time to the applicant to activate the facility as the commissioner deems necessary. The extensions of time shall not exceed a total of an additional 12 months. If the commissioner's order is the subject of an appeal in accordance with chapter 14, the time period referred to in this section for activation of the facility and any extensions shall begin when all appeals or rights of appeal from the commissioner's order have concluded or expired.

History: 1983 c 247 s 25; 1983 c 250 s 3

47.61 ELECTRONIC FUNDS TRANSFER FACILITIES; DEFINITIONS.

[For text of subds 1 to 3, see M.S.1982]

Subd. 4. "Financial institution" means a national banking association, federal savings and loan association, or federal credit union having its main office in this state, or a bank, savings bank, savings and loan association, credit union,

industrial loan and thrift company, or regulated lender under chapter 56 established and operating under the laws of this state.

Subd. 5. [Repealed, 1983 c 102 s 3]

[For text of subds 6 and 7, see M.S.1982]

History: 1983 c 252 s 1

47.62 AUTHORIZATION.

Subdivision 1. Any person may establish and maintain one or more electronic financial terminals. Any financial institution may provide for its customers the use of an electronic financial terminal by entering into an agreement with any person who has established and maintains one or more electronic financial terminals if that person authorizes use of the electronic financial terminal to all financial institutions on a nondiscriminatory basis pursuant to section 47.64.

[For text of subds 2 to 4, see M.S.1982]

History: 1983 c 102 s 1

47.64 OPERATION OF AN ELECTRONIC FINANCIAL TERMINAL.

Subdivision 1. Any person establishing and maintaining an electronic financial terminal for use by one type of financial institution shall, upon written request, make its services available to any requesting financial institution of similar type on a fair, equitable and nondiscriminatory basis approved by the commissioner. A financial institution requesting use of an electronic financial terminal shall be permitted its use only if the financial institution conforms to reasonable technical operation standards which have been established by the electronic financial terminal provider as approved by the commissioner. For purposes of this subdivision, the types of financial institutions are: (a) commercial banks and mutual savings banks; (b) credit unions, industrial loan and thrift companies, and regulated lenders under chapter 56; and (c) savings and loan associations. The services of an electronic financial terminal may be made available to any type of financial institution. After March 1, 1979, or earlier if determined by the commissioner to be technically feasible, an electronic financial terminal which is used by or made available to one type of financial institution shall be made available, upon request, to other types of financial institutions on a fair, equitable and nondiscriminatory basis as approved by the commissioner. The charges required to be paid to any person establishing and maintaining an electronic financial terminal shall be related to an equitable proportion of the direct costs of establishing, operating, and maintaining the terminal plus a reasonable return on those costs to the owner of the terminal. The charges may provide for amortization of development costs and capital expenditures over a reasonable period of time.

[For text of subd 2, see M.S.1982]

Subd. 3. Any agreement or charge between a person establishing an electronic financial terminal and the person at whose location the terminal is established shall be upon such commercially reasonable terms and conditions as are agreed to by the parties. A person at whose location an electronic financial terminal is established and maintained may limit the kind of financial transaction functions which the terminal may perform, but the person shall make available upon request every financial transaction function which the terminal does perform to all financial institutions, their affiliates, or agents on a nondiscriminatory basis.

A function involving either a bank credit card authorized pursuant to section 48.185 or other credit card authorized under any other similar open end consumer credit sales plan need not be made so available.

[For text of subds 4 and 5, see M.S.1982]

Subd. 6. A customer of a bank, savings bank, savings and loan association, or credit union located outside Minnesota may, with the consent of the person establishing an electronic financial terminal, use the terminal for the withdrawal of funds and for the inquiry as to the balance in that customer's accounts maintained with that institution. Nothing in sections 47.61 to 47.74 shall be construed to authorize any person, other than a financial institution, to engage in business which is only legally authorized to be engaged in by financial institutions.

History: 1983 c 102 s 2; 1983 c 250 s 4; 1983 c 252 s 2