

TITLE 26  
BANKS AND BANKING

CHAPTER 28  
MORTGAGE COMPANIES

26-2801. SHORT TITLE. This act may be known and may be cited as the "Mortgage Company Act."

[26-2801, added 1990, ch. 225, sec. 1, p. 600.]

26-2802. DEFINITIONS. As used in this chapter:

- (1) "Department" means the department of finance of the state of Idaho.
- (2) "Director" means the director of the department of finance.
- (3) "Mortgage company" means any person who, directly or indirectly is engaged in one (1) of the following:
  - (a) Makes or offers to make residential mortgage loans.
  - (b) Services or offers to service residential mortgage loans.
  - (c) Buys or sells, or offers to buy or sell, residential mortgage loans.
- (4) "Person" means an individual, sole proprietorship, partnership, corporation or other association of individuals, however organized.
- (5) "Residential mortgage loan" means a loan made primarily for personal, family or household use and is primarily secured by a security interest on residential real property located in this state.

[26-2802, added 1990, ch. 225, sec. 1, p. 600; am. 2007, ch. 126, sec. 7, p. 380.]

26-2803. EXEMPTIONS. The provisions of this chapter do not apply to:

- (1) A real estate broker or real estate salesman licensed under chapter 20, title 54, Idaho Code, and engaged in the sale of real estate as a principal vocation if the real estate broker or salesman affiliated with the broker represents either the buyer or the seller.
- (2) Agencies of the United States and of this state and its political subdivisions.
- (3) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold.
- (4) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs.
- (5) Any person licensed or chartered under the laws of this state or the United States as a bank, regulated lender licensed under the Idaho credit code, savings and loan association, credit union, or trust company.

[26-2803, added 1990, ch. 225, sec. 1, p. 600.]

26-2804. UNLAWFUL ACTS. It shall be unlawful on and after July 1, 1990, for any person to act as mortgage company unless the person complies with the provisions of this chapter and rules promulgated pursuant thereto or unless the person is exempted from the provisions of this chapter.

[26-2804, added 1990, ch. 225, sec. 1, p. 601.]

26-2805. POWERS AND DUTIES OF DIRECTOR. (1) In addition to the other duties imposed upon the director by law, the director shall:

(a) Conduct investigations and issue subpoenas as necessary to determine whether any person has violated any provision of this chapter or rules promulgated under authority of this chapter.

(b) Conduct examinations of the books and records of mortgage companies and investigations as necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter.

(2) The director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter. Any rules promulgated shall be promulgated in accordance with chapter 52, title 67, Idaho Code. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to chapter 52, title 67, Idaho Code.

[26-2805, added 1990, ch. 225, sec. 1, p. 601; am. 1993, ch. 216, sec. 13, p. 596.]

26-2806. REMEDIES AVAILABLE TO THE DEPARTMENT. (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order thereunder, he may in his discretion bring an action in any court of competent jurisdiction, and upon a proper showing for each there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this chapter or any rule and regulation promulgated pursuant thereto and to enforce compliance under this chapter or any rule or order hereunder.

(b) An order that the person violating any provision of this chapter, rule or order hereunder pay a civil penalty to the department in an amount not to exceed five thousand dollars (\$5,000) for each violation.

(c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees.

(d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this chapter.

(e) An order granting other appropriate remedies.

(2) If the director finds that a person has violated or is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may order the person to cease and desist from the violations.

(3) Within thirty (30) days after an order is issued under subsection (2) of this section, the person to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A person to whom an order is issued under subsection (3) of this section may petition for a judicial review of the order in conformance with the provisions of chapter 52, title 67, Idaho Code.

[26-2806, added 1990, ch. 225, sec. 1, p. 601.]

26-2807. RESERVE ACCOUNTS. (1) A mortgage company shall, conspicuously and specifically, disclose to each borrower all contractual provisions relating to reserve accounts, impound accounts, escrow accounts, or any other

account maintained for the borrower in order to pay for property taxes, property insurance or private mortgage insurance.

(2) A mortgage company shall not keep more than one hundred twenty per cent (120%) of the amounts necessary on an annual basis to pay expected insurance, taxes or other agreed charges. Upon written notice by a borrower to the director and the mortgage company that reserves being required are excessive, the mortgage company must, within thirty (30) days, either refund the excess or explain to the borrower and the director why the amounts being required are believed to be reasonable and necessary. If, after notice of hearing under chapter 52, title 67, Idaho Code, the director determines that the reserve account, impound account, escrow account or any other similar account maintained for a borrower is not reasonable, the director may order the mortgage company to reduce its reserve requirements for such accounts. In any proceeding under this section the burden shall be upon the mortgage company to prove that the amounts required for such reserve accounts are based upon actual and reasonably anticipated charges.

[26-2807, added 1990, ch. 225, sec. 1, p. 602.]

26-2808. ANNUAL STATEMENTS. (1) A mortgage company shall deliver to the borrower at least annually during the month of January, a statement of the borrower's account showing the date and amount of all payments made or credited to the account for the immediately preceding twelve (12) month period, and the total unpaid balance. The statement shall also clearly describe in full the amounts received on all tax and insurance reserve accounts, the disposition of such funds, and the amounts held in reserve in such accounts. The statement shall clearly indicate any penalty or interest payments because of failure to pay taxes on time. A fee shall not be charged the borrower for the statement.

(2) A borrower may request additional statements from a mortgage company at any time, and the mortgage company may require a fee to provide each such statement. The statement shall be delivered to the borrower within thirty (30) days after receipt of a written request from the borrower.

[26-2808, added 1990, ch. 225, sec. 1, p. 602.]

26-2809. NOTICE OF TRANSFER. The mortgage company shall provide notice to the borrower within fifteen (15) days after any sale or assignment of the promissory note of the borrower to another person in which the mortgage company does not retain the loan servicing. A mortgage company purchasing or receiving assignment of the promissory note with servicing shall provide to the borrower within thirty (30) days a written statement describing policies relating to the reserve account.

[26-2809, added 1990, ch. 225, sec. 1, p. 603.]

26-2810. COMPLAINTS. (1) If requested by the director for a specified period of time, the mortgage company shall furnish to the director a copy of all written complaints made to the mortgage company by borrowers, together with a copy of any and all written responses by the mortgage company to the borrower. The borrower complaint and mortgage company responses shall be furnished to the director within thirty (30) days of the receipt of the borrower's complaint by the mortgage company.

[26-2810, added 1990, ch. 225, sec. 1, p. 603.]

26-2811. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

[26-2811, added 1990, ch. 225, sec. 1, p. 603.]