

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 388

Introduced by Lindstrom, 18.

Read first time January 13, 2017

Committee:

- 1 A BILL FOR AN ACT relating to notaries; to amend section 45-740, Reissue
- 2 Revised Statutes of Nebraska, and sections 64-301 and 64-308,
- 3 Revised Statutes Cumulative Supplement, 2016; to authorize remote
- 4 electronic notarial acts as prescribed; to provide standards for
- 5 video and audio conference technology used for such notarial acts;
- 6 to provide an operative date; to repeal the original sections; and
- 7 to declare an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-740, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 45-740 (1) A licensee, an officer, an employee, or an agent of the
4 licensee shall not:

5 (a) Assess a late charge if all payments due are received before the
6 date upon which late charges are authorized in the underlying mortgage or
7 trust deed or other loan documents;

8 (b) Delay closing of a residential mortgage loan for the purpose of
9 increasing interest, costs, fees, or charges payable by the borrower;

10 (c) Misrepresent or conceal material facts or make false promises
11 intended to influence, persuade, or induce an applicant for a residential
12 mortgage loan or a borrower to take a residential mortgage loan or cause
13 or contribute to such a misrepresentation by any person acting on a
14 licensee's or any other lender's behalf;

15 (d) Misrepresent to, or conceal from, an applicant for a residential
16 mortgage loan or a borrower material facts, terms, or conditions of a
17 residential mortgage loan to which the licensee is a party;

18 (e) Fail to make disclosures as required by the Residential Mortgage
19 Licensing Act and any other applicable state or federal law including
20 regulations thereunder;

21 (f) Engage in any transaction, practice, or business conduct that is
22 not in good faith or that operates a fraud upon any person in connection
23 with the making of any residential mortgage loan;

24 (g) Receive compensation for acting as a mortgage banker or mortgage
25 loan originator if the licensee has otherwise acted as a real estate
26 broker or agent in connection with the sale of the real estate which
27 secures the residential mortgage loan unless the licensee has provided
28 written disclosure to the person from whom compensation is collected that
29 the licensee is receiving compensation both for acting as a mortgage
30 banker or mortgage loan originator and for acting as a real estate broker
31 or agent;

1 (h) Advertise, display, distribute, broadcast, televise, or cause or
2 permit to be advertised, displayed, distributed, broadcasted, or
3 televised, in any manner, including by the Internet, any false,
4 misleading, or deceptive statement or representation with regard to
5 rates, terms, or conditions for a residential mortgage loan or any false,
6 misleading, or deceptive statement regarding the qualifications of the
7 licensee or of any officer, employee, or agent thereof;

8 (i) Record a lien on real property if money is not available for the
9 immediate disbursal to the borrower unless, before that recording, the
10 licensee (i) informs the borrower in writing of the reason for the delay
11 and of a definite date by which disbursement shall be made and (ii)
12 obtains the borrower's written permission for the delay unless the delay
13 is required by any other state or federal law;

14 (j) Fail to account for or deliver to any person personal property
15 obtained in connection with the mortgage banking business, including, but
16 not limited to, money, funds, deposits, checks, drafts, mortgages, trust
17 deeds, or other documents or things of value which the licensee was not
18 entitled to retain;

19 (k) Fail to disburse, without just cause, any funds in accordance
20 with any agreement connected with the mortgage banking business;

21 (l) Collect fees and charges on funds other than new funds if the
22 licensee makes a residential mortgage loan to refinance an existing
23 residential mortgage loan to a current borrower of the licensee within
24 twelve months after the previous residential mortgage loan made by the
25 licensee;

26 (m) Assess any fees against the borrower other than those which are
27 reasonable and necessary, including actual charges incurred in connection
28 with the making, closing, disbursing, servicing, extending, transferring,
29 or renewing of a loan, including, but not limited to, (i) prepayment
30 charges, (ii) delinquency charges, (iii) premiums for hazard, private
31 mortgage, disability, life, or title insurance, (iv) fees for escrow

1 services, appraisal services, abstracting services, title services,
2 surveys, inspections, credit reports, notary services, and recording of
3 documents, (v) origination fees, (vi) interest on interest after default,
4 and (vii) costs and charges incurred for determining qualification for
5 the loan proceeds and disbursement of the loan proceeds;

6 (n) Allow the borrower to finance, directly or indirectly, (i) any
7 credit life, credit accident, credit health, credit personal property, or
8 credit loss-of-income insurance or debt suspension coverage or debt
9 cancellation coverage, whether or not such coverage is insurance under
10 applicable law, that provides for cancellation of all or part of a
11 borrower's liability in the event of loss of life, health, personal
12 property, or income or in the case of accident written in connection with
13 a residential mortgage loan or (ii) any life, accident, health, or loss-
14 of-income insurance without regard to the identity of the ultimate
15 beneficiary of such insurance. For purposes of this section, any premiums
16 or charges calculated and paid on a periodic basis that are not added to
17 the principal of the loan shall not be considered financed directly or
18 indirectly by the creditor;

19 (o) Falsify any documentation relating to a residential mortgage
20 loan or a residential mortgage loan application;

21 (p) Recommend or encourage default on an existing loan or other debt
22 prior to and in connection with the closing or planned closing of a
23 residential mortgage loan that refinances all or any portion of such
24 existing loan or debt;

25 (q) Borrow money from, personally loan money to, or guarantee any
26 loan made to any customer or applicant for a residential mortgage loan;

27 (r) Obtain a signature on a document required to be notarized in
28 connection with a residential mortgage loan or a residential mortgage
29 loan application unless the qualified notary public performing the
30 notarization is physically present at the time the signature is obtained,
31 except as provided in section 64-308; or

1 (s) Make any payment, threat, or promise, directly or indirectly, to
2 any person for the purposes of influencing the independent judgment of
3 the person in connection with a residential mortgage loan or make any
4 payment, threat, or promise, directly or indirectly, to any appraiser of
5 a property for the purposes of influencing the independent judgment of
6 the appraiser with respect to the value of the property.

7 (2) Any person who violates any provision of subsection (1) of this
8 section is guilty of a Class III misdemeanor.

9 (3) Any person who violates any provision of subsection (1) of this
10 section is liable to the applicant for a residential mortgage loan or to
11 the borrower for the fees, costs, and charges incurred in connection with
12 obtaining or attempting to obtain the residential mortgage loan, damages
13 resulting from such violation, interest on the damage from the date of
14 the violation, and court costs, including reasonable attorney's fees.

15 Sec. 2. Section 64-301, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 64-301 Sections 64-301 to 64-317 and section 4 of this act shall be
18 known and may be cited as the Electronic Notary Public Act.

19 Sec. 3. Section 64-308, Revised Statutes Cumulative Supplement,
20 2016, is amended to read:

21 64-308 (1) An electronic notarial act shall not be performed:

22 (a) If ~~if~~ the signer of the electronic document ~~is not in the~~
23 ~~physical presence of the electronic notary public at the time of~~
24 ~~notarization and~~ is not personally known to the electronic notary public
25 or identified by the notary public through satisfactory evidence as
26 provided in section 64-105; or -

27 (b) Except as provided in subsection (2) of this section, if the
28 signer of the electronic document is not in the physical presence of the
29 electronic notary public at the time of notarization.

30 (2) The fact that the signer of an electronic document is not in the
31 physical presence of the electronic notary public at the time of

1 notarization shall not bar performance of an electronic notarial act if
2 the signer and electronic notary use video and audio conference
3 technology that meets the requirements of section 4 of this act and that
4 permits the electronic notary to communicate with and identify the signer
5 at the time of the electronic notarial act. Such identification shall be
6 confirmed by:

7 (a) Personal knowledge;

8 (b) An antecedent in-person identity proofing process in accordance
9 with the specifications of the Federal Bridge Certification Authority; or

10 (c) A valid digital certificate accessed by biometric data or by use
11 of an interoperable personal identity verification card that is designed,
12 issued, and managed in accordance with the specifications published by
13 the National Institute of Standards and Technology in Federal Information
14 Processing Standards Publication 201-2, entitled Personal Identity
15 Verification (PIV) of Federal Employees and Contractors, and supplements
16 thereto or revisions thereof, including the specifications published by
17 the federal Chief Information Officers Council, entitled Personal
18 Identity Verification Interoperability for Non-Federal Issuers.

19 Sec. 4. Video and audio conference technology used for remote
20 electronic notarial acts under subsection (2) of section 64-308 shall
21 meet the following standards:

22 (1) The persons communicating must be able to simultaneously see and
23 speak to one another;

24 (2) The signal transmission must be live and real-time;

25 (3) The signal transmission must be secure from interception through
26 lawful means by anyone other than the persons communicating; and

27 (4) The technology shall comply with any rules and regulations
28 adopted and promulgated by the Secretary of State.

29 Sec. 5. Sections 1, 2, 3, 4, and 6 of this act become operative on
30 July 1, 2017. The other sections of this act become operative on their
31 effective date.

1 Sec. 6. Original section 45-740, Reissue Revised Statutes of
2 Nebraska, and sections 64-301 and 64-308, Revised Statutes Cumulative
3 Supplement, 2016, are repealed.

4 Sec. 7. Since an emergency exists, this act takes effect when
5 passed and approved according to law.