
DIVISION OF BANKING

1601 N. Harrison Avenue, Suite 1, Pierre, SD 57501
605-773-3421

MEMORANDUM

NUMBER: 20-022

DATE: November 14, 2017

TO: SOUTH DAKOTA MORTGAGE AND MONEY LENDERS

FROM: BRET AFDAHL, Director

RE: HOUSE BILL 1179

House Bill 1179 (HB 1179) was passed by the South Dakota Legislature during the 2017 legislative session, and became effective on July 1, 2017. Among other things, HB 1179 created very limited exemptions to the licensure requirements of SDCL Chapter 54-4 and SDCL Chapter 54-14 for certain money lenders and nonresidential mortgage lenders.

Section 1

Modified SDCL 54-14-13 to provide that the licensure requirements of SDCL Chapter 54-14 do not apply to lenders who originate, sell, or service five or fewer nonresidential mortgage loans in a twelve-month period as long as the total amount of the loans outstanding does not exceed four million dollars. No exemption is provided from the tax imposed under chapter 10-43 as referenced in SDCL 54-14-30. This exemption applies jointly to every entity in which the lender has an equity interest, whether the loan or loans are made by that lender or through an entity in which the lender holds an equity interest.

SDCL 54-14-13, as modified by HB 1179, also provides that exempted lenders must make an annual report to the South Dakota Division of Banking. Exempt lenders must make their reports to the Division of Banking no later than December thirty-first of 2017, and every subsequent year for any year in which the lenders originate, sell, or service nonresidential mortgage loans. The annual report to the Division of Banking must contain the name and address of the lender who originated, sold, or serviced nonresidential mortgage loans, the number of nonresidential mortgage loans originated, sold, or serviced in the preceding calendar year, and the total balance of all nonresidential mortgage loans originated, sold, or serviced.

This reporting process is not intended to apply to loans made between family members.

Section 2

Modified the existing mortgage loan originator license requirement exemptions provided in SDCL 54-14-20.1 to exempt individuals who offer or negotiate terms of five or fewer nonresidential mortgage loans in a twelve-month period as long as the total amount of the originated loans outstanding does not exceed four million dollars.

Section 3

Modified SDCL Chapter 54-4 to create a licensure exemption for lenders that originate, sell, service, or acquire five or fewer loans in a twelve-month period, as long as the total amount of the

loans outstanding does not exceed four million dollars. No exemption is provided from the tax imposed under chapter 10-43 as referenced in SDCL 54-4-54. This exemption applies jointly to every entity in which the lender has an equity interest, whether the loan or loans are made by that lender or through an entity in which the lender holds an equity interest.

Section 3 also provides that lenders exempted by this section must report to the South Dakota Division of Banking annually. Exempt lenders must make their reports to the Division of Banking no later than December thirty-first of 2017, and every subsequent year for any year in which the lenders originate, sell, service, or acquire loans. The annual report to the Division of Banking must contain the name and address of the lender who originated, sold, serviced, or acquired loans, the number of loans originated, sold, serviced, or acquired in the preceding calendar year, and the total balance of all loans originated, sold, serviced, or acquired.

The licensure exemptions created by HB 1179 combined have a limit of five total loans with a total balance of four million dollars for each lender, including every entity in which the lender has an equity interest.

This reporting process is not intended to apply to loans made between family members.

Section 4

Modified SDCL Chapter 54-4 to provide that the licensure exemptions provided SDCL Chapter 54-4 do apply to any debt-collection tactic prohibited in SDCL 54-4-77.

If you would like additional information regarding this bill, or if you have any questions, please do not hesitate to contact the South Dakota Division of Banking (Division) at 605-773-3421.