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June 2009

To: The Chief Executive Officer of State Banks, Credit Unions, Consumer Finance Companies, Licensed Mortgage Originators and Exempt Entities, and Other Interested Parties

From: Kevin M. Murphy
Deputy Commissioner of Commerce

Handwritten initials 'KM' in black ink, positioned to the right of the 'From:' line.

Re: Legislative Changes to Chapters 47 and 58

The Commerce Department's legislative proposal concerning financial institutions was incorporated into House File 2123 as Article III of that omnibus budget bill. The bill was passed by the Minnesota Legislature and signed into law by Governor Pawlenty. The pertinent portions of the bill applicable to the addressees are summarized below. The full text of the bill is available on the Internet.¹ A separate letter was also sent to the entities affected by changes to "payday" lending laws.

Article III of House File 2123

<u>Section No.</u>	<u>Affected Statute</u>	<u>Effective Date</u>
1	47.58, subd. 1	August 1, 2009
Relates to reverse mortgage laws and amends the definition of "lender" to clarify that any residential mortgage lender subject to Chapter 58 (Mortgage Originator Servicing and Licensing) must comply with the various requirements and consumer protections set forth in Section 47.58 concerning reverse mortgage loans.		
2, 3 and 4	47.60	August 1, 2009
Clarifies that a licensee under Section 47.60 (Consumer Small Loans), also commonly called "payday" lenders, must be a business entity. A natural person would not be eligible to obtain a license under Section 47.60.		
3	47.60, subd. 3	August 1, 2009
Clarifies that entities that do not have a physical location in Minnesota that make consumer small loans electronically to Minnesota residents must be licensed by the Commerce Department and must follow the various requirements of Section 47.60, including the fee schedule. The practical effect is that Internet payday lenders must be licensed by the Commerce Department.		
5	48.21	August 1, 2009
Deals with foreclosed real estate acquired by state banks and provides that the maximum holding period for other real estate is five years. A bank may apply to the Department via letter application to hold the real estate for an additional five-year period. The Department may approve the		

¹ <https://www.revisor.leg.state.mn.us/laws/?id=37&doctype=chapter&year=2009&type=0>

application for an additional period not to exceed five years provided that (1) the bank has made a good faith attempt to dispose of the property during the initial five-year period, or (2) disposal within the additional period would be detrimental to the bank. This change provides a mechanism for banks to avoid writing down the carrying value of foreclosed real estate by 20 percent per year beginning in year six. Banks are still required to comply with the other requirements of Minnesota Rules, Part 2675.2170, e.g. obtain an independent appraisal within 60 days of acquiring title to the property and write off the balance in excess of the appraised value. This provision was added by an amendment to the bill at the request of the Minnesota Bankers Association with the support of the Independent Community Bankers of Minnesota and the Commerce Department.

6 58.05, subd. 3 August 1, 2009
Technical change to correct a cross reference.

7 58.06, subd. 2 August 1, 2009
Technical change to distinguish the different licensing requirements that apply to residential mortgage originators versus the requirements applicable to mortgage servicers. Also amends the language concerning the roster of individuals that a mortgage originator must maintain to include the dates that mandatory testing and continuing education were completed by the individuals on the roster. See also section 8.

8 58.126 September 1, 2009
Amends the education requirements applicable to natural persons that engage in residential mortgage origination or make residential mortgage loans. The initial education requirement is increased from 15 to 20 hours and an annual continuing education requirement of 8 hours per year is added. The 8 hours of continuing education must include the following: 3 hours of federal laws and regulation; 2 hours of ethics; and 2 hours of standards covering nontraditional mortgage lending. Our reading of the change means that an individual who becomes a mortgage originator after September 1 must have completed the 20 hours of initial training before serving in that capacity. Those individuals must complete the 8 hours of continuing education prior to September 1, 2010. Individuals currently serving as mortgage originators who have completed the 15 hours must complete the 5 additional hours plus the 8 hours of continuing education prior to September 1, 2010.

Section 8 also authorizes the Department to establish by rule a testing requirement for individuals engaged in residential mortgage origination and subject to the requirements of Section 58.126(a). Following enactment of the requirement by rule, an individual would have to satisfy the testing requirement before engaging in residential mortgage origination or making residential mortgage loans.

Section 8 is in direct response to the requirements of the federal SAFE Act and after consultation with the Minnesota mortgage trade association.

9 58.13 August 1, 2009
A technical cross reference change related to section 1.

The above summary is provided for your convenience and is not intended as legal advice. The statutes and the changes thereto are complex and reference to the bill is recommended.