

**9-2209. Commissioner, powers and duties.** (a) The commissioner may exercise the following powers:

- (1) Adopt rules and regulations as necessary to carry out the intent and purpose of this act and to implement the requirements of applicable federal law;
  - (2) make investigations and examinations of the licensee's or registrant's operations, books and records as the commissioner deems necessary for the protection of the public and control access to any documents and records of the licensee or registrant under examination or investigation;
  - (3) charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant, licensee or registrant. The commissioner shall establish such fees in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. Charges for administration of this act shall be based on the licensee's loan volume;
  - (4) order any licensee or registrant to cease any activity or practice which the commissioner deems to be deceptive, dishonest, violative of state or federal law or unduly harmful to the interests of the public;
  - (5) exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the licensee or registrant or administers statutes, rules and regulations or programs related to mortgage business and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies which are deemed necessary or beneficial to the administration of this act;
  - (6) disclose to any person or entity that an applicant's, licensee's or registrant's application, license or registration has been denied, suspended, revoked or refused renewal;
  - (7) require or permit any person to file a written statement, under oath or otherwise as the commissioner may direct, setting forth all the facts and circumstances concerning any apparent violation of this act, or any rule and regulation promulgated thereunder or any order issued pursuant to this act;
  - (8) receive, as a condition in settlement of any investigation or examination, a payment designated for consumer education to be expended for such purpose as directed by the commissioner;
  - (9) require that any applicant, registrant, licensee or other person successfully passes a standardized examination designed to establish such person's knowledge of mortgage business transactions and all applicable state and federal law. Such examinations shall be created and administered by the commissioner or the commissioner's designee, and may be made a condition of application approval or application renewal;
  - (10) require that any applicant, licensee, registrant or other person complete a minimum number of prelicensing education hours and complete continuing education hours on an annual basis. Prelicensing and continuing education courses shall be approved by the commissioner, or the commissioner's designee, and may be made a condition of application approval and renewal;
  - (11) require fingerprinting of any applicant, registrant, licensee, members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent acting on their behalf, or other person as deemed appropriate by the commissioner. The commissioner or the commissioner's designee, may submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;
  - (12) refer such evidence as may be available concerning any violation of this act or of any rule and regulation or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a referral, institute the appropriate criminal proceedings under this act. Upon receipt of such referral, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the commissioner, such employee shall be appointed [as] a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney;
  - (13) issue and apply to enforce subpoenas in this state at the request of a comparable official of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Kansas mortgage business act if the activities had occurred in this state;
  - (14) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding loan originator or mortgage company licensing to and from any source so directed by the commissioner;
  - (15) establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, registrants or other persons subject to this act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The commissioner shall regularly report violations of law, as well as enforcement actions and other relevant information to the nationwide mortgage licensing system and registry;
  - (16) require any licensee or registrant to file reports with the nationwide mortgage licensing system and registry in the form prescribed by the commissioner or the commissioner's designee;
  - (17) receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of the Kansas mortgage business act or commence proceedings on the commissioner's own initiative;
  - (18) provide guidance to persons and groups on their rights and duties under the Kansas mortgage business act;
  - (19) enter into any informal agreement with any mortgage company for a plan of action to address violations of law. The adoption of an informal agreement authorized by this paragraph shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this paragraph shall not be considered an order or other agency action, and shall be considered confidential examination material pursuant to K.S.A. 9-2217, and amendments thereto. All such examination material shall also be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. The provisions of this paragraph shall expire on July 1, 2021, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021; and
  - (20) issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the Kansas administrative procedure act.
- (b) For the purpose of any examination, investigation or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.
- (c) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.
- (d) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- (e) Except for refund of an excess charge, no liability is imposed under the Kansas mortgage business act for an act done or omitted in conformity with a rule and regulation or written administrative interpretation of the commissioner in effect at the time of the act or omission, notwithstanding that after the act or omission, the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.

**History:** L. 1996, ch. 175, § 9; L. 1999, ch. 45, § 9; L. 2000, ch. 17, § 4; L. 2001, ch. 88, § 10; L. 2005, ch. 144, § 4; L. 2009, ch. 29, § 9; L. 2016, ch. 15, § 7; July 1.