

the claimant's last item of labor, skill, or materials was furnished to the improvement and shall be calculated thereafter at the rate computed for verdicts and judgments, as provided in section 549.09.

Sec. 2. **TECHNICAL CORRECTION.**

H. F. No. 559, if enacted at the 1984 regular session, is effective July 1, 1984, not August 1, 1983, and interest begins to accrue on July 1, 1984 on any pending causes of action.

Sec. 3. **EFFECTIVE DATE.**

Section 1 applies to contracts entered into on or after August 1, 1984.

Approved April 25, 1984

**CHAPTER 473 — S.F.No. 1732**

*An act relating to financial institutions; authorizing industrial loan and thrift companies to act as trustees or custodians of certain retirement accounts; authorizing the removal of the bond requirement on the advertisement and sale of certain evidences of indebtedness; allowing special powers without inclusion in articles of incorporation; providing certain conventional loans on the same terms as other lenders; authorizing open-end loans; providing an alternative to filing fee charges; authorizing the deposit of real estate broker and salesperson trust funds in industrial loan and thrifts; amending Minnesota Statutes 1982, sections 47.75, subdivision 1; 53.04, subdivision 1, and by adding a subdivision; 56.131, subdivision 2; 82.24, subdivisions 1, 2, and 6; Minnesota Statutes 1983 Supplement, sections 53.04, subdivision 3a; and 53.05; proposing new law coded in Minnesota Statutes, chapter 56.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 47.75, subdivision 1, is amended to read:

Subdivision 1. **RETIREMENT ACCOUNTS.** A commercial bank, savings bank, savings, building and loan association, or credit union, or industrial loan and thrift company may act as trustee or custodian under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended, and also under the Federal Employee Retirement Income Security Act of 1974, as amended. The trustee or custodian may accept the trust funds if the funds are invested only in savings accounts or time deposits in the commercial bank, savings bank, savings, building and loan association, or credit union, or industrial loan and thrift company. All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but

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individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

Sec. 2. Minnesota Statutes 1982, section 53.04, subdivision 1, is amended to read:

Subdivision 1. Industrial loan and thrift companies, in addition to the general and usual powers incidental to ordinary corporations in this state, which are not specifically restricted in this chapter, shall have the special powers enumerated in subdivisions 2 to 6, ~~which powers must be set forth in their articles of incorporation or amendments thereto~~ 5.

Sec. 3. Minnesota Statutes 1983 Supplement, section 53.04, subdivision 3a, is amended to read:

Subd. 3a. (a) The right to make loans, secured or unsecured, at the rates and on the terms and other conditions permitted licensees under chapter 56. Loans made under the authority of section 6 must be in amounts in compliance with section 53.05, clause (7). All other loans made under the authority of chapter 56 must be in amounts in compliance with section 53.05, clause ~~(3)~~ (7), or 56.131, subdivision 1, paragraph (a), whichever is less. The right to extend credit or lend money and to collect and receive charges therefor as provided by chapter 334, or in lieu thereof to charge, collect, and receive interest at the rate of 21.75 percent per annum. The provisions of sections 47.20 and 47.21 do not apply to loans made under this section, except as specifically provided in this subdivision. Nothing in this subdivision is deemed to supersede, repeal, or amend any provision of section 53.05. A licensee making a loan under this chapter secured by a lien on real estate shall comply with the requirements of section 47.20, subdivision 8.

(b) Loans made under this section at a rate of interest not in excess of that provided for in paragraph (a) may be secured by real or personal property, or both. If the proceeds of a loan made after August 1, 1984 are used in whole or in part to satisfy the balance owed on a contract for deed, the rate of interest charged on the loan must not exceed the rate provided in section 47.20, subdivision 4a. If the proceeds of a loan secured by a first lien on the borrower's primary residence are used to finance the purchase of the borrower's primary residence, the loan must comply with the provisions of section 47.20.

(c) A loan made under this section that is secured by real estate and that is in a principal amount of \$7,500 or more and a maturity of 60 months or more may contain a provision permitting discount points, if the loan does not provide a loan yield in excess of the maximum rate of interest permitted by this subdivision. Loan yield means the annual rate of return obtained by a licensee computed as the annual percentage rate is computed under Federal Regulation Z. If the loan is prepaid in full, the licensee must make a refund to the borrower to the extent

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that the loan yield will exceed the maximum rate of interest provided by this subdivision when the prepayment is taken into account.

Sec. 4. Minnesota Statutes 1982, section 53.04, is amended by adding a subdivision to read:

Subd. 3b. The right to make loans under chapter 47 on the same terms and subject to the same conditions as apply to other lenders under that chapter.

Sec. 5. Minnesota Statutes 1983 Supplement, section 53.05, is amended to read:

**53.05 POWERS, LIMITATION.**

No industrial loan and thrift company may do any of the following:

(1) carry commercial or demand banking accounts; use the word "bank" or "banking" in its corporate name; operate as a savings bank;

(2) have outstanding at any one time certificates of indebtedness, savings accounts, and savings deposits, exclusive of those held by the company, as security for loans made by it of more than seven times the sum of the contributed capital and appropriated reserves of the company until July 1, 1985, or the date an industrial loan and thrift company obtains a commitment for insurance or guarantee of accounts acceptable to the commissioner as required by section 53.10, whichever is earlier, and thereafter 15 times the sum of contributed capital and appropriated reserves of the company;

(3) accept trusts, except as provided in section 1, or act as guardian, administrator, or judicial trustee in any form;

(4) deposit any of its funds in any banking corporation, unless that corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance;

(5) change any allocation of capital made pursuant to section 53.03 or reduce or withdraw in any way any portion of the contributed capital and appropriated reserves without prior written approval of the commissioner of banks;

(6) take any instrument in which blanks are left to be filled in after execution; or

(7) lend money in excess of ten percent of its contributed capital and appropriated reserves to a person primarily liable. "Contributed capital and appropriated reserves" means the total of the company's contributed capital and appropriated reserves at all its authorized locations.

If a loan has been made to a person primarily liable and payments have been made on a certificate of indebtedness securing it, the amount of the

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payments may be added to the limitation contained in this clause for the purpose of determining whether additional loans may be made to that person.

Sec. 6. **[56.125] OPEN-END LOANS.**

Subdivision 1. Authorization. A licensee may make open-end loans under this chapter other than loans under a credit card or overdraft checking plan and may charge a daily, monthly, or other periodic rate of finance charge on unpaid balances not in excess of the maximum rate of interest permitted by section 56.131, subdivision 1, paragraph (a), clause (2). For purposes of this section "open-end loan" means an agreement whereby: (1) the licensee pursuant to written agreement permits the borrower to obtain advances of money from the licensee from time to time or the licensee advances money on behalf of the borrower from time to time as directed by the borrower; (2) the borrower has the option of paying the balance in full at any time without penalty; (3) the amount of each advance and permitted charges and costs are debited to the borrower's account and payments and other credits are credited to the same account; and (4) the charges are computed on the unpaid principal balance of the account from time to time. A finance charge imposed on a transaction subject to this section must be computed on: (1) the previous balance after deducting all payments on accounts received by the licensee during the cycle and all credits to the account during the cycle applicable to any transaction reflected in the previous balance; (2) the average daily balance determined by adding the daily balances on the account for each day in the billing cycle and dividing the total by the number of days in the billing cycle; or (3) daily balances. The daily balance is figured by taking the beginning balance of the account each day, adding any new advances, subtracting any principal payments or credits, and any unpaid interest. The average daily balance is calculated by adding together all of the daily balances for the billing cycle, and the sum is then divided by the total number of days in the billing cycle. A billing cycle is considered to be monthly if the billing dates are on the same day of each month or do not vary by more than four days from that day.

Subd. 2. REAL ESTATE AS SECURITY. A licensee may take a lien upon real estate as security for any open-end loan at or after such time as the outstanding balance first exceeds \$2,700. A subsequent reduction in the balance below \$2,700 has no effect on the lien. A licensee may retain the security interest until it terminates the open-end account. If there is no outstanding balance in the account and there is no commitment by the licensee to a line of credit in excess of \$2,700, the licensee shall, within 20 days following written demand by the borrower, deliver to the borrower a release of the mortgage on any real property taken as security for the open-end loan agreement. A real estate mortgage authorized for a financial institution secures all advances and obligations thereunder from the date of recording.

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**Subd. 3. CHARGES.** In addition to the charges authorized in subdivision 1, a licensee may contract for and receive in connection with an open-end loan agreement the additional charges, fees, costs, and expenses with respect to the line of credit limit permitted by sections 56.131, subdivisions 1, paragraph (f), clauses (4) and (5), 2, 5, and 6; and 56.155 with respect to other loans, with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the amount of the insurance may not exceed the total balance of the loan due on the date of the borrower's death or on the date of the last billing statement in the case of credit life insurance, or all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance must be calculated in each billing cycle by applying the current monthly premium rate for the insurance to the unpaid balances in the borrower's account.

(2) The amount, terms, and conditions of any credit insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured.

**Subd. 4. ALTERNATIVE COMPLIANCE.** Compliance by a licensee making open-end loans pursuant to this section with the open-end credit provisions of the federal Truth-in-Lending Act and regulations issued thereunder is required, and the disclosure requirements in sections 56.12 and 56.14 do not apply with respect to open-end loans made pursuant to this section. In addition, prior to any licensee taking a lien upon the borrower's homestead, as defined in chapter 510, as security for any open-end loan pursuant to subdivision 2, the borrower shall be provided with a statement in substantially the following form, in bold face type of a minimum size of 12 points, signed and dated by the borrower at the time of the execution of the contract surrendering the homestead exemption, immediately adjacent to a listing of the homestead property: "I understand that some or all of the above real estate is normally protected by law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract."

Sec. 7. Minnesota Statutes 1982, section 56.131, subdivision 2, is amended to read:

**Subd. 2. ADDITIONAL CHARGES.** In addition to the charges provided for by this section and section 56.155, no further or other amount whatsoever, shall be directly or indirectly charged, contracted for, or received for the loan made, except actual out of pocket expenses of the licensee to realize on a security after default, and except for the following additional charges which may be included in the principal amount of the loan:

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(a) Lawful fees and taxes paid to any public officer to record, file, or release security;

(b) With respect to a loan secured by an interest in real estate, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this section; provided the costs do not exceed one percent of the principal amount or \$250, whichever is greater:

(1) Fees or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes;

(2) An amount not to exceed \$150, if not paid to the licensee, an employee of the licensee, or a person related to the licensee, for fees for preparation of a mortgage, settlement statement, or other documents, fees for notarizing mortgages and other documents, and appraisal fees;

(c) The premium for insurance in lieu of perfecting and releasing a security interest to the extent that the premium does not exceed the fees described in paragraph (a).

Sec. 8. Minnesota Statutes 1982, section 82.24, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** All trust funds received by a broker or his salespersons shall be deposited forthwith upon receipt in a trust account, maintained by the broker for such purpose in a bank or an industrial loan and thrift company with deposit liabilities designated by the broker, except as such moneys may be paid to one of the parties pursuant to express written agreement between the parties to a transaction. The depository bank shall be a Minnesota bank or trust company or any foreign bank and shall authorize the commissioner to examine its records of such deposits upon demand by the commissioner. The industrial loan and thrift company shall be organized under chapter 53.

Sec. 9. Minnesota Statutes 1982, section 82.24, subdivision 2, is amended to read:

Subd. 2. **LICENSEE ACTING AS PRINCIPAL.** Any licensed real estate broker or salesperson acting in the capacity of principal in the sale of interests in real estate owned by him shall deposit in a Minnesota bank or trust company, or any foreign bank which authorizes the commissioner to examine its records of such deposits, or an industrial loan and thrift company organized under chapter 53 with deposit liabilities, in a trust account, those parts of all payments received on contracts which are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, and reserve for taxes and insurance or any other encumbrance on such receipts. Such deposits shall be maintained until disbursement is made under the terms of the encumbrance pertaining thereto and proper accounting on such property made to the parties entitled thereto.

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Sec. 10. Minnesota Statutes 1982, section 82.24, subdivision 6, is amended to read:

Subd. 6. **NOTICE OF TRUST ACCOUNT STATUS.** The names of the banks and industrial loan and thrift companies and the trust account numbers used by a broker shall be provided to the commissioner at the time of application for the broker's license. The broker shall immediately report to the commissioner any change of trust account status including changes in banks and industrial loan and thrift companies, account numbers, or additional accounts in the same or other banks and industrial loan and thrift companies. A broker shall not close an existing trust account without giving ten days written notice to the commissioner.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 10 are effective the day following final enactment.

Approved April 25, 1984

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**CHAPTER 474 — S.F.No. 1776**

*An act relating to real property; providing that the mortgage and contract for deed moratorium shall not be repealed until May 1, 1985; allowing catastrophic medical expenses to be considered by a court when determining delay of foreclosure sale; providing that the equity in the property may be considered by a court; amending Minnesota Statutes 1983 Supplement, sections 47.20, subdivision 15; 559.21, subdivision 6; 580.031; 583.03; 583.05; and 583.08; Laws 1983, chapter 215, section 16.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1983 Supplement, section 47.20, subdivision 15, is amended to read:

Subd. 15. Notwithstanding the provisions of any other law to the contrary, any notice of default on homestead property as defined in section 583.02, mailed after May 24, 1983 and prior to May 1, ~~1984~~ 1985, shall indicate that the borrower has 60 days from the date the notice is mailed in which to cure the default. The notice shall include a statement that the borrower may be eligible for an extension of the time prior to foreclosure and execution sale under sections 583.01 to 583.12.

Sec. 2. Minnesota Statutes 1983 Supplement, section 559.21, subdivision 6, is amended to read:

Subd. 6. **TEMPORARY MINIMUM NOTICE.** Notwithstanding the provisions of any other law to the contrary, no contract for conveyance of

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