

FIRST REGULAR SESSION

SENATE BILL NO. 538

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Read 1st time February 22, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1955S.021

AN ACT

To repeal sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.819, 443.821, 443.825, 443.827, 443.833, 443.839, 443.841, 443.849, 443.851, 443.855, 443.857, 443.859, 443.863, 443.867, 443.869, 443.879, 443.881 and 443.887, RSMo 2000, relating to mortgages and mortgage brokers, and to enact in lieu thereof twenty-three new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.819, 443.821, 443.825, 443.827, 443.833, 443.839, 443.841, 443.849, 443.851, 443.855, 443.857, 443.859, 443.863, 443.867, 443.869, 443.879, 443.881 and 443.887, RSMo 2000, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.819, 443.821, 443.825, 443.827, 443.833, 443.839, 443.841, 443.849, 443.851, 443.855, 443.857, 443.859, 443.863, 443.867, 443.869, 443.879, 443.881 and 443.887, to read as follows:

443.803. 1. For the purposes of sections 443.800 to 443.893, the following terms mean:

(1) "Advertisement", the attempt by publication, dissemination or circulation to induce, directly or indirectly, any person to apply for a [residential mortgage] loan [application relative] to [a mortgage] **be** secured by residential real estate [situated in Missouri];

(2) "Affiliate":

(a) Any entity that directly controls, or is controlled by, the licensee and any other company that is directly affecting activities regulated by sections 443.800 to 443.893 that is controlled by the company that controls the licensee;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(b) Any entity:

a. That is controlled, directly or indirectly, by a trust or otherwise by, or for the benefit of, shareholders who beneficially, or otherwise, control, directly or indirectly, by trust or otherwise, the licensee or any company that controls the licensee; or

b. A majority of the directors or trustees of which constitute a majority of the persons holding any such office with the licensee or any company that controls the licensee;

(c) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the licensee or any subsidiary or affiliate of the licensee;

(3) "Annual audit", a certified audit of the licensee's books and records and systems of internal control performed by a certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards;

(4) "Board", the residential mortgage [licensing] board, created in section 443.816;

(5) "Borrower", the person or persons who use the services of a loan broker, originator or lender;

(6) "Director", the director of the division of finance within the department of economic development;

(7) "Escrow agent", a third party, individual or entity, charged with the fiduciary obligation for holding escrow funds on a residential mortgage loan pending final payout of those funds in accordance with the terms of the residential mortgage loan;

(8) "Exempt entity":

(a), the following entities:

[a.] **(a)** Any [banking organization] **bank or trust company organized under the laws of this or any other state or any national bank or any** foreign banking corporation licensed by the division of finance or the United States Comptroller of the Currency to transact business in this state;

[b. Any national bank, federally chartered savings and loan association, federal savings bank or federal credit union;

c. Any pension trust, bank trust or bank trust company;

d.] **(b)** Any **state or federal** savings and loan association, savings bank or credit union [organized under the laws of this or any other state] or any consumer finance company licensed under sections 367.100 to 367.215, RSMo, [and sections 408.231 to 408.240, RSMo] **which is actively engaged in consumer credit lending;**

[e.] **(c)** Any insurance company authorized to transact business in this state;

[f.] **(d)** Any [entity] **person** engaged solely in commercial mortgage lending or any person [or entity] making or acquiring residential or commercial construction loans with the person's [or entity's] own funds for the person's [or entity's] own investment;

[g.] **(e)** Any service corporation of a **federally chartered or state chartered** savings and

loan association [or], savings bank [organized under the laws of this state or the service corporation of a federally chartered savings and loan association or savings bank] or [any] credit union [association organized under the laws of this state or owned primarily by credit unions and subsidiaries of such credit union associations];

[h.] **(f)** Any first-tier subsidiary of a **national or state** bank[, the charter of which is issued under the laws of this state by the board or the first-tier subsidiary of a bank chartered by the United States Comptroller of the Currency, the Federal Reserve Board or other appropriate federal regulatory agency and] that has its principal place of business in this state, provided that [the] **such** first-tier subsidiary is regularly examined by the division of finance or the Comptroller of the Currency or a consumer compliance examination **of it** is regularly conducted by the Federal Reserve [Board];

[i.] **(g)** Any [entity] **person** engaged solely in the business of securing loans on the secondary market **provided such person does not make decisions about the extension of credit to the borrower;**

[j.] **(h)** Any mortgage banker as defined in subdivision (19) of this subsection; or

[k.] **(i)** Any wholesale mortgage lender who purchases mortgage loans originated by a licensee **provided such wholesale lender does not make decisions about the extension of credit to the borrower;**

[(b)] **(j)** Any person [or entity] making or acquiring residential mortgage loans with the person's [or entity's] own funds for the person's [or entity's] own investment;

[(c)] **(k)** Any person employed or contracted by a licensee to assist in the performance of the activities regulated by sections 443.800 to 443.893 who is compensated in any manner by only one licensee;

[(d)] **(l)** Any person licensed pursuant to the real estate agents and brokers licensing law, chapter 339, RSMo, who engages in servicing or the taking of applications and credit and appraisal information to forward to a licensee or an exempt entity [as defined in this subdivision under the provisions of sections 443.800 to 443.893] for transactions in which the licensee is acting as a real estate broker and who is compensated by either a licensee or an exempt entity [under the provisions of sections 443.800 to 443.893];

[(e)] **(m)** Any [individual, corporation, partnership or other entity that] **person who** originates, services or brokers residential mortgagee loans[, as such activities are defined in sections 443.800 to 443.893,] and who receives no compensation for those activities, subject to the director's regulations regarding the nature and amount of compensation;

(9) "Financial institution", a savings and loan association, savings bank, credit union, **mortgage banker** or [a] bank organized under the laws of Missouri or [a savings and loan association, savings bank, credit union or a bank organized under] the laws of the United States with its principal place of business in Missouri;

(10) "First-tier subsidiary", as defined by administrative rule promulgated by the director;

(11) "Full-service office", office and staff in Missouri reasonably adequate to handle efficiently communications, questions and other matters relating to any application for a **new**, or **[an]** existing, home mortgage **[secured by residential real estate situated in Missouri with respect to] loan** which the licensee is brokering, funding, originating, purchasing or servicing. The management and operation of each full-service office must include observance of good business practices such as adequate, organized and accurate books and records, ample phone lines, hours of business, staff training and supervision and provision for a mechanism to resolve consumer inquiries, complaints and problems. The director shall promulgate regulations with regard to the requirements of this subdivision and shall include an evaluation of compliance with this subdivision in the periodic examination of the licensee;

(12) "Government-insured mortgage loan", any mortgage loan made on the security of residential real estate insured by the Department of Housing and Urban Development or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;

(13) "Lender", any person**[, partnership, association, corporation or any other entity]** who either lends **money for** or invests money in residential mortgage loans;

(14) "Licensee" or "residential mortgage licensee", a person**[, partnership, association, corporation or any other entity]** who**[, or which,]** is licensed **[pursuant to sections 443.800 to 443.893]** to engage in the activities regulated by sections 443.800 to 443.893;

(15) "Loan broker" or "broker", a person**[, partnership, association or corporation, other than persons, partnerships, associations or corporations]** exempted from licensing pursuant to subdivision (8) of this subsection, who performs the activities described in subdivisions (17) and (31) of this subsection;

(16) "Loan brokerage agreement", a written agreement in which a broker **[or loan broker]** agrees to do either of the following:

(a) Obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan; or

(b) Consider making a residential mortgage loan to the borrower;

(17) "Loan brokering", "mortgage brokering", or "mortgage brokerage service", the act of helping to obtain for an investor **[or other entity,]** or from an investor **[or other entity]** for a borrower, a loan secured by residential real estate situated in Missouri or assisting an investor **[or other entity]** or a borrower in obtaining a loan secured by residential real estate **[situated in Missouri]** in return for consideration;

(18) "Making a residential mortgage loan" or "funding a residential mortgage loan", for compensation or gain, either, directly or indirectly, advancing funds or making a commitment to **[advance funds to a loan] an** applicant for a residential mortgage loan;

(19) "Mortgage banker", a mortgage loan company which is subject to licensing,

supervision, or annual audit requirements by the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States Veterans Administration (VA), or the United States Department of Housing and Urban Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved lender, loan correspondent, seller, or servicer;

(20) "Mortgage loan", "residential mortgage loan" [or "home mortgage loan"], a loan to, or for the benefit of, any natural person made primarily for personal, family or household use, including a reverse mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real property or certificates of stock or other evidence of ownership interests in, and proprietary leases from, corporations or partnerships formed for the purpose of cooperative ownership of residential real property[, all located in Missouri];

(21) "Net worth", as provided in section 443.859;

(22) "Originating", the advertising, soliciting, taking applications, processing, closing, or issuing of commitments for, and funding of, residential mortgage loans;

(23) "Party to a residential mortgage financing transaction", a borrower, lender or loan broker in a residential mortgage financing transaction;

(24) "Payments", payment of all, or any part of, the following: principal, interest and escrow reserves for taxes, insurance and other related reserves and reimbursement for lender advances;

(25) **"Person", any individual, firm, partnership, corporation, company or association and the legal successors thereof;**

(26) "Personal residence address", a street address, but shall not include a post office box number;

[(26)] (27) "Purchasing", the purchase of conventional or government-insured mortgage loans secured by residential real estate [situated in Missouri] from either the lender or from the secondary market;

[(27)] (28) "Residential mortgage board", the residential mortgage board created in section 443.816;

[(28)] (29) "Residential mortgage financing transaction", the negotiation, acquisition, sale or arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential mortgage loan or residential mortgage loan commitment;

[(29)] (30) "Residential mortgage loan commitment", a written conditional agreement to finance a residential mortgage loan;

[(30)] (31) "Residential real property" or "residential real estate", real property located in this state improved by a one-family to four-family dwelling;

[(31)] (32) "Servicing", the collection or remittance for, or the right or obligation to collect or remit for, any lender, noteowner, noteholder or for a licensee's own account, of payments, interests, principal and trust items such as hazard insurance and taxes on a residential mortgage

loan [in accordance with the terms of the residential mortgage loans,] and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

[(32)] **(33)** "Soliciting, processing, placing or negotiating a residential mortgage loan", for compensation or gain, either, directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the processing of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower including, but not limited to, the submission of credit packages for the approval of lenders, the preparation of residential mortgage loan closing documents, **and** including a closing in the name of a broker;

[(33)] **(34)** "Ultimate equitable owner", a person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, alien business organization, trust or any other form of business organization regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or other entities or devices, or any combination thereof.

2. The director may define by [rules and regulations] **rule** any terms used in sections 443.800 to 443.893 for [the] efficient and clear administration [of sections 443.800 to 443.893].

443.805. 1. No person[, partnership, association, corporation or other entity] shall engage in the business of brokering, funding, originating, servicing or purchasing of residential mortgage loans [for property located in Missouri] without first obtaining a license from the director, pursuant to [the provisions of] sections 443.800 to 443.893 and the regulations promulgated thereunder. The licensing provisions of sections 443.805 to 443.812 shall not apply to any entity engaged solely in commercial mortgage lending or to any person[, partnership, association, corporation or other] exempt [entity] as provided in section 443.803 or pursuant to regulations promulgated as provided in sections 443.800 to 443.893.

2. No person[, partnership, association, corporation, or other entity] except a licensee[, licensed pursuant to sections 443.800 to 443.893,] or [an] **exempt** entity [exempt from licensing pursuant to section 443.803] shall do any business under any name or title or circulate or use any advertising or make any representation or give any information to any person which indicates or reasonably implies activity within the scope of the provisions of sections 443.800 to 443.893.

443.809. When the director has reasonable cause to believe that any[entity which]**person** has not submitted an application for licensure **and** is conducting any of the activities described in subsection 1 of section 443.805, the director may examine all books and records of the [entity]**person** and any additional documentation necessary[in order] to determine whether such [entity]**person** is required to be licensed pursuant to [the provisions of] sections 443.800 to 443.893.

443.810. [Beginning one year after the rules and regulations promulgated by the director

which establish the initial licensing procedures are adopted by the joint committee on administrative rules] **Effective May 21, 1998**, any person[, partnership, association, corporation or other entity] who violates any provision of sections 443.805 to 443.812 [is] **shall be deemed** guilty of a class C felony.

443.812. 1. Only one license shall be issued to each person[, partnership, association, corporation or other entity] conducting activities regulated by sections 443.800 to 443.893. A [residential mortgage] licensee shall [record] **register with the director** each office, place of business or location [at which a residential mortgage licensee] **where the licensee** conducts any part of [the entity's] **the licensee's** business [with the director] pursuant to [the provisions of] section 443.839.

2. Licensees [under the provisions of sections 443.800 to 443.893] may only solicit, broker, fund, originate, serve and purchase residential mortgage loans in conformance with [the provisions of] sections 443.800 to 443.893 and such rules [and regulations that] **as** may be promulgated by the director thereunder.

443.819. 1. No person[, partnership, association, corporation or other entity] engaged in a business regulated by sections 443.800 to 443.893 shall operate such business under a name other than the real names of the [individuals] **persons** conducting such business, a corporate name adopted pursuant to chapter 351, RSMo, or a fictitious name registered with the secretary of state's office.

2. Any person who knowingly violates this section [is] **shall be deemed** guilty of a class A misdemeanor. A person who is convicted of a second or subsequent violation of this section [is] **shall be deemed** guilty of a class C felony.

443.821. The director shall issue a license upon completion of the following:

- (1) The filing of an application [for license];
- (2) The filing with the director of a listing of judgments entered against, and bankruptcy petitions by, the [license] applicant for the preceding seven years;
- (3) The payment of investigation and application fees to be established by administrative rule; and
- (4) An investigation of the averments required by section 443.827, which investigation must allow the director to issue positive findings stating that the financial responsibility, experience, character and general fitness of the [license] applicant, and of the members thereof, if the [license] applicant is a partnership or association, and of the officers and directors thereof if the [license] applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the scope of sections 443.800 to 443.893. If the director does not find the applicant's business and personal conduct warrants the issuance of a license, the director shall notify the [license] applicant of the denial with the reasons stated for such denial. An applicant may appeal such denial to the board.

443.825. 1. Application for a [residential mortgage] license shall be made as provided in sections 443.833 and 443.835. The application shall be in writing, made under oath, and on a form provided by the director.

2. The application shall contain the name and complete business and residential address or addresses of the [license] applicant. If the [license] applicant is a partnership, association, corporation or other form of business organization, the application shall contain the names and complete business and residential addresses of each member, director and principal officer of such entity. Such application shall also include a description of the activities of the [license] applicant, in such detail and for such periods as the [board] **director** may require, including all of the following:

(1) An affirmation of financial solvency ~~noting~~ such capitalization requirements as may be required by the director, and access to such credit as may be required by the director;

(2) An affirmation that the [license] applicant or the applicant's members, directors or principals, as may be appropriate, are at least eighteen years of age;

(3) Information as to the character, fitness, financial and business responsibility, background, experience and criminal records ~~[if]~~ **of** any:

(a) Person, entity or ultimate equitable owner that owns or controls, directly or indirectly, ten percent or more of any class of stock of the [license] applicant;

(b) Person, entity or ultimate equitable owner that is not a depository institution that lends, provides or infuses, directly or indirectly, in any way, funds to or into [a license] ~~an~~ applicant, in an amount equal to, or more than, ten percent of the [license] applicant's net worth;

(c) Person, entity or ultimate equitable owner that controls, directly or indirectly, the election of twenty-five percent or more of the members of the board of directors of [a license] ~~the~~ applicant; ~~[or]~~ **and**

(d) Person, entity or ultimate equitable owner that the director finds influences management of the [license] applicant.

443.827. Each [applicant for a license issued pursuant to sections 443.800 to 443.893] **application** shall be accompanied by [the following] ~~an~~ averment [stating] that the applicant:

(1) Will maintain at least one full-service office within the state of Missouri as provided in section 443.857;

(2) Will maintain staff reasonably adequate to meet the requirements of section 443.857;

(3) Will keep and maintain for thirty-six months the same written records as required by the federal Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., and any other information required by [regulations] **rules** of the director [regarding any home mortgage in the course of the conduct of the applicant's residential mortgage business];

(4) Will **timely** file [with the director, when due,] any report ~~[or reports which the applicant is]~~ required ~~[to file under any of]~~ **pursuant to** sections 443.800 to 443.893;

(5) Will not engage, whether as principal or agent, in the practice of rejecting residential mortgage applications [without reasonable cause,] or varying terms or application procedures without reasonable cause, [for home mortgages] on real estate within any specific geographic area from the terms or procedures generally provided by the licensee within other geographic areas of the state;

(6) Will not engage in fraudulent home mortgage underwriting practices;

(7) Will not make payments, whether directly or indirectly, of any kind to any in-house or fee appraiser of any government or private money lending agency with which an application for a home mortgage has been filed for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by such home mortgage;

(8) Has filed tax returns, both state and federal, for the past three years or filed with the director a personal, an accountant's or attorney's statement as to why no return was filed;

(9) Will not engage in any [discriminating or redlining] activities prohibited by section 443.863;

(10) Will not knowingly misrepresent, circumvent or conceal[, through whatever subterfuge or device,] any [of the] material particulars[, or the nature thereof,] regarding a transaction to which the applicant is a party [which could injure another party to such transaction];

(11) Will disburse funds in accordance with the applicant's agreements through a licensed and bonded disbursing agent or licensed real estate broker;

(12) Has not committed any crime against the laws of this state, or any other state or of the United States, involving moral turpitude, fraudulent or dishonest dealings and that no final judgment has been entered against the applicant in a civil action upon grounds of fraud, misrepresentation or deceit which has not been previously reported to the director;

(13) Will account [or] **for and** deliver to any person any personal property, including, but not limited to, money, funds, deposits, checks, drafts, mortgages[, any other document] or **any other** thing of value, which has come into the applicant's possession and which is not the applicant's property or which the applicant is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;

(14) Has not engaged in any conduct which would be cause for denial of a license;

(15) Has not become insolvent;

(16) Has not submitted an application [for a license under the provisions of sections 443.800 to 443.893] which contains a material misstatement;

(17) Has not demonstrated [by a course of conduct,] negligence or incompetence in the performance of any activity [for which the applicant is] required to hold a license under sections 443.800 to 443.893;

(18) Will advise the director in writing of any changes to the information submitted on the most recent application for license within forty-five days of such change. The written notice must be signed in the same form as the application for the license being amended;

(19) Will comply with the provisions of sections 443.800 to 443.893, or with any lawful order[,] **or** rule [or regulation] made [or issued under the provisions of sections 443.800 to 443.893] **thereunder**;

(20) [When probable cause exists,] Will submit to periodic examinations by the director [as required by sections 443.800 to 443.893]; and

(21) Will advise the director in writing of any judgments entered against, and bankruptcy petitions by, the license applicant within five days of the occurrence of the judgment or petition.

443.833. 1. Licenses [issued pursuant to sections 443.800 to 443.893] shall be renewed on the first anniversary of the date of issuance and every two years thereafter. [The applicant for renewal of a license issued pursuant to sections 443.800 to 443.893 shall complete a] Renewal application [form] **forms** and [submit the filing] fees **shall be submitted** to the director at least sixty days before the renewal date.

2. The director shall send [notices to the licensees of the renewal date of their license] **notice** at least ninety days before the licensee's renewal date, but failure to send or receive such notice is no defense for failure to timely renew [a license issued pursuant to sections 443.800 to 443.893], except [that, if the licensee requests] **when** an extension for good cause [and such extension] is granted by the director. If the director does not grant an extension and the licensee fails to submit a completed renewal application form and the proper fees in a timely manner, the director may assess additional fees as follows:

(1) A fee of five hundred dollars shall be assessed the licensee thirty days after the proper renewal date, and one thousand dollars each month thereafter, until the license is either renewed or expires pursuant to subsections 3 and 4 of this section;

(2) Such fee shall be assessed without prior notice to the licensee, but shall be assessed only in cases where the director [has in the director's possession] **possesses** documentation of the licensee's continuing activity for which the unexpired license was issued.

3. A license which is not renewed by the date required in this section shall automatically become inactive. No activity regulated by sections 443.800 to 443.893 shall be conducted by the licensee when a license becomes inactive. An inactive license may be reactivated by filing a completed reactivation application with the director, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

4. A license which is not renewed within one year of becoming inactive shall expire.

443.839. 1. A licensee may apply for authority to open and maintain additional [full-service] offices [if the licensee] **by**:

(1) [Gives] **Giving** the director prior notice of the licensee's intention in such form as

prescribed by the director;

(2) **[Pays] Paying** a fee to be established by the director by administrative rule.

2. Upon receipt of the notice and fee required by subsection 1 of this section, the director shall issue a certificate for the additional **[full-service]** office. The certificate shall be conspicuously displayed in the respective additional **[full-service]** office.

443.841. The license **[of a licensee whose principal place of business is within the state of Missouri or of an out-of-state licensee]** shall be conspicuously displayed in every **Missouri** office **[of the licensee located in Missouri. Out-of-state licensees without a Missouri office shall produce the license upon request]**. The license shall state the full name and address of the licensee. The license shall not be transferable or assignable. A separate certificate shall be issued for display in each **[full-service]** Missouri office.

443.849. **[1. Any person who is licensed pursuant to the provisions of sections 443.800 to 443.893, if such person is appointed or elected to any position requiring the receipt of payment, management or use of any money belonging to a residential mortgage licensee engaged in the activities of originating, servicing or purchasing mortgage loans or whose duties permit such person to have access to, or custody of, any of the licensee's money or securities or custody of any money or securities belonging to third parties or whose duties permit such person to regularly make entries in the books or other records of a licensee, shall before assuming such person's duties, maintain a surety bond in the amount of twenty thousand dollars by a fidelity insurance company licensed to do business in this state or a letter of credit in such amount issued by a financial institution that is insured by the Federal Deposit Insurance Corporation.**

2. Each bond shall be for any loss the licensee may sustain in money or other property through the commission of any dishonest or criminal act or omission by any person required to be bonded, whether committed alone or in concert with another. The bond shall be in the form and amount approved by the director. The director may at any time require a licensee to have one or more additional bonds. A true copy of every bond, including all riders and endorsements executed subsequent to the effective date of the bond, shall be filed at all times with the director. Each bond shall provide that a cancellation thereof shall not become effective unless and until thirty days' notice, in writing, shall first be given to the director, unless the director had previously approved the cancellation. If the director believes the licensee's business is being conducted in an unsafe manner due to the lack of bonds or the inadequacy of bonds, the director may proceed against the licensee as provided in section 443.879.

3. All licensees shall maintain a bond in accordance with this section. Each bond shall be for the recovery of any expenses, damages or fees owed to, or levied by, the director in accordance with this section. The bond shall be payable when the licensee fails to comply with any provision of sections 443.800 to 443.893 and shall be in the form of a surety or licensure bond in the amount and form as prescribed by the director pursuant to rules and regulations. The bond shall be

payable to the director and shall be issued by some insurance company authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the director within ten days of the execution thereof.

4. The director may promulgate rules with respect to bonding requirements for residential mortgage licenses as are reasonable and necessary to accomplish the purposes of sections 443.800 to 443.893.] **A corporate surety bond in the principal sum of twenty thousand dollars shall accompany each application for a license. The bond shall be in form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant in connection with the activities of originating, servicing or acquiring mortgage loans. An applicant or licensee may, in lieu of filing the bond required pursuant to this section, provide the director with a twenty thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial institution.**

443.851. 1. At the end of the licensee's fiscal year, but in no case more than twelve months after the last audit conducted pursuant to this section and section 443.853, each [residential mortgage] licensee shall cause the licensee's books and accounts to be audited by a certified public accountant not connected with such licensee. The books and records of all [persons licensed pursuant to sections 443.800 to 443.893] **licensees** shall be maintained on an accrual basis. The audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements in the report and must be performed in accordance with generally accepted accounting principles and generally accepted auditing standards.

2. As used in this section and section 443.853, the term "expression of opinion" includes either:

- (1) An unqualified opinion;
- (2) A qualified opinion;
- (3) A disclaimer of opinion; or
- (4) An adverse opinion.

3. If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor shall be fully explained. An opinion, qualified as to a scope limitation, shall not be acceptable.

4. The audit report shall be filed with the director within one hundred twenty days of the audit date. The report filed with the director shall be certified by the certified public accountant conducting the audit. The director may promulgate rules regarding late audit reports.

5. As an alternative to the audit requirements of subsections 1 through 4 of this section, a licensee may post a corporate surety bond, in addition to that described in

section 443.849, in the amount of one hundred thousand dollars. The bond shall be in form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the licensee, its agents and subagents in connection with the activities of originating, servicing or acquiring mortgage loans. A licensee may, in lieu of this bond, provide the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial institution.

443.855. In addition to such other rules[, regulations and policies as] the director may promulgate to effectuate [the purpose of] sections 443.800 to 443.893, the director shall prescribe [regulations] **rules** governing the advertising of mortgage loans, including, without limitation, the following requirements:

(1) Advertising for loans transacted pursuant to the requirements of sections 443.800 to 443.893 may not be false, misleading or deceptive. No [entity] **person** whose activities are regulated pursuant to the provisions of sections 443.800 to 443.893 may advertise in any manner so as to indicate or imply that the [entity's] **person's** interest rates or charges for loans are in any way recommended, approved, set or established by the state or by the provisions of sections 443.800 to 443.893;

(2) All advertisements by a licensee shall contain the name and an office address of such entity, which shall conform to a name and address on record with the director[;

(3) No licensee shall advertise the licensee's services in Missouri in any medium, whether print or electronic, without the words "Missouri Residential Mortgage Licensee"].

443.857. Each [residential mortgage] licensee shall maintain, in the state of Missouri, at least one full-service office with staff reasonably adequate to efficiently handle [communication, questions and] all [other] matters relating to any **proposed or** existing home mortgage with respect to which such licensee is performing services[, regardless of kind, for any borrower or lender, noteowner or noteholder or for himself or herself while engaged in the residential mortgage business].

443.859. [Beginning one year after the rules and regulations promulgated by the director which establish the initial licensing procedures are adopted by the joint committee on administrative rules] **Effective May 21, 1998**, every [residential mortgage] licensee shall have and maintain a net worth of not less than twenty-five thousand dollars. The director may promulgate rules with respect to net worth definitions and requirements for [residential mortgage] licensees as necessary to accomplish the purposes of sections 443.800 to 443.893. In lieu of the net worth requirement established by this section, the director may accept evidence of conformance by the licensee with the net worth requirements of the United States Department of Housing and Urban Development.

443.863. It is [considered discriminatory] **unlawful discrimination** to refuse [to grant]

loans or to vary the terms of loans or the application procedures for loans because of:

(1) [In the case of the proposed borrower, such] **The** borrower's race, color, religion, national origin, age, gender or marital status; or

(2) [In the case of a mortgage loan, solely] The geographic location of the proposed security.

443.867. At the time of application [all], **each** residential mortgage [licensees who are brokers] **licensee which is a broker** shall disclose, within the loan brokerage disclosure statement, that:

(1) The [licensees do] **licensee does** not make loans; and

(2) [That actual] **The** funds are provided by another [entity, and such entity] **person which** may affect availability of funds.

443.869. **1.** The functions, powers and duties of the director shall include the following:

(1) To issue or refuse to issue any license as provided in sections 443.800 to 443.893;

(2) To revoke or suspend for cause any license issued pursuant to sections 443.800 to 443.893;

(3) To keep records of all licenses issued pursuant to sections 443.800 to 443.893;

(4) To receive, consider, investigate and act upon complaints made by any person in connection with any residential mortgage licensee in this state;

(5) To consider and act upon any recommendations from the residential mortgage board;

(6) To prescribe the forms of and receive:

(a) Applications for licenses; and

(b) All reports and all books and records required to be made by any residential mortgage licensee pursuant to the provisions of sections 443.800 to 443.893, including annual audited financial statements;

(7) To adopt rules [and regulations] necessary and proper for the administration of sections 443.800 to 443.893;

(8) To subpoena documents and witnesses and compel their attendance and production, to administer oaths and to require the production of any books, papers or other material relevant to any inquiry authorized by sections 443.800 to 443.893;

(9) To require information with regard to any [license] applicant as the director may deem desirable, with due regard to the paramount interests of the public [as to], **about** the experience, background, honesty, truthfulness, integrity and competency of the [license] applicant [as to] **concerning** financial transactions involving primary or subordinate mortgage financing and where the [license] applicant is an entity other than an individual, as to the honesty, truthfulness, integrity and competency of any officer or director of the corporation, association or other entity or the members of a partnership;

(10) To examine the books and records of every [residential mortgage] licensee at intervals as provided by sections 443.800 to 443.893 and the rules promulgated thereunder;

(11) To enforce the provisions of sections 443.800 to 443.893;

(12) To levy fees and charges for services performed in administering the provisions of sections 443.800 to 443.893. The aggregate of all fees collected by the director shall be deposited promptly after receipt and accompanied by a detailed statement of such receipts in the residential mortgage licensing fund;

(13) To appoint a staff which may include an executive director, examiners, supervisors, experts, special assistants and any necessary support staff as needed to effectively and efficiently administer the provisions of sections 443.800 to 443.893; and

(14) To conduct hearings for such purposes as the director deems appropriate.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

443.879. 1. In addition to any reports required pursuant to sections 443.800 to 443.893, every [residential mortgage] licensee shall file such other reports as the director shall request.

2. Any licensee or any officer, director, employee or agent of any licensee who fails to file any reports required by sections 443.800 to 443.893[, including those required by subsection 1 of this section,] or who shall deliberately, willfully or knowingly make, subscribe to or cause to be made any false entry with intent to deceive the director or the director's appointees or who shall purposely cause [unreasonable] delay in filing such reports [is] **shall be deemed** guilty of a class A misdemeanor.

443.881. 1. Upon written notice to a [residential mortgage] licensee, the director may suspend or revoke any license issued pursuant to sections 443.800 to 443.893 if the director makes a finding of one or more of the following in the notice that:

(1) Through separate acts or an act or a course of conduct, the licensee has violated any provision of sections 443.800 to 443.893, any rule [or regulation] promulgated by the director or any other law[,] **or** rule [or regulation] of this state or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license would have warranted the director in refusing originally to issue such license;

(3) If a licensee is other than an individual, any ultimate equitable owner, officer, director or member of the licensed partnership, association, corporation or other entity has so acted or failed to act as would be cause for suspending or revoking a license to that party as an individual.

2. No license shall be suspended or revoked, except as provided in this section, nor shall any

[residential mortgage] licensee be subject to any other disciplinary proceeding without notice of the licensee's right to a hearing as provided in sections 443.800 to 443.893.

3. The director, on good cause shown that an emergency exists, may suspend any license for a period not to exceed thirty days, pending an investigation.

4. The provisions of section 443.835 shall not affect a residential mortgage licensee's civil or criminal liability for acts committed before such licensee surrenders the [licensee's] license.

5. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the [residential mortgage] licensee and any person.

6. Every license issued pursuant to sections 443.800 to 443.893 shall remain in force and effect until the license has expired without renewal, has been surrendered, revoked or suspended in accordance with the provisions of sections 443.800 to 443.893, except that, the director may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if no fact or condition exists which would have warranted the director to refuse originally to issue such license pursuant to sections 443.800 to 443.893.

7. Whenever the director revokes or suspends a license issued pursuant to sections 443.800 to 443.893, the director shall execute in duplicate a written order to that effect. The director shall publish notice of such order in a newspaper of general circulation in the county in which the residential mortgage licensee's business is located and shall serve a copy of such order upon the licensee. Such order may be reviewed by the board.

8. When the director finds any person in violation of the grounds provided in subsection 9 of this section, the director may enter an order imposing one or more of the following disciplinary actions:

- (1) Revocation of the license;
- (2) Suspension of the license subject to reinstatement upon satisfying all reasonable conditions the director may specify;
- (3) Placement of the [residential mortgage] licensee [or applicant] on probation for a period of time and subject to any reasonable conditions as the director may specify;
- (4) Issuance of a reprimand; and
- (5) Denial of a license.

9. The following acts shall constitute grounds for which the disciplinary actions specified in subsection 8 of this section may be taken:

- (1) Being convicted or found guilty, regardless of pendency of an appeal, of a crime in any jurisdiction which involves fraud, dishonest dealings, or any other act involving moral turpitude;
- (2) Fraud, misrepresentation, deceit or negligence in any mortgage financing transaction;
- (3) A material or intentional misstatement of fact on an initial or renewal application;
- (4) Failure to follow the director's [regulations] **rules** with respect to placement of funds in escrow accounts;

(5) Insolvency or filing under any provision of the United States Bankruptcy Code as a debtor;

(6) Failure to account or deliver to any person any property such as any money, funds, deposits, checks, drafts, mortgages or any other documents or things of value, which has come into the [person's hands] **licensee's possession** and which is not the person's property or which the [person] **licensee** is not in law or equity entitled to retain, under the circumstances and at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;

(7) Failure to disburse funds in accordance with agreements;

(8) Any misuse, misapplication or misappropriation of trust funds or escrow funds;

(9) Having a license, or the equivalent, to practice any profession or occupation revoked, suspended or otherwise acted against, including the denial of licensure by a licensing authority of this state or another state, territory or country for fraud, dishonest dealings or any other act involving moral turpitude;

(10) Failure to issue a satisfaction of mortgage when the [residential] mortgage has been executed and proceeds were not disbursed to the benefit of the mortgagor and when the mortgagor has fully paid the [residential mortgage] licensee's costs and commission;

(11) Failure to comply with any order of the director or rule made or issued pursuant to the provisions of sections 443.800 to 443.893;

(12) Engaging in activities regulated by sections 443.800 to 443.893 without a current, active license unless specifically exempted by the provisions of sections 443.800 to 443.893;

(13) Failure to pay [in a] timely [manner] any fee or charge due under the provisions of sections 443.800 to 443.893;

(14) Failure to maintain, preserve and keep available for examination, all books, accounts or other documents required by the provisions of sections 443.800 to 443.893 and the rules of the director;

(15) Refusal to permit an investigation or examination of the licensee's or the licensee's affiliates' books and records or refusal to comply with the director's subpoena or subpoena duces tecum;

(16) A pattern of substantially underestimating [the maximum] closing costs;

(17) Failure to comply with, or any violation of, any provision of sections 443.800 to 443.893.

10. A licensee shall be subject to the disciplinary actions specified in sections 443.800 to 443.893 for a violation of subsection 9 of this section by any officer, director, shareholder, joint venture, partner, ultimate equitable owner or employee of the licensee.

11. Such licensee shall be subject to suspension or revocation for employee actions only if there is a pattern of repeated violations by **an employee or** employees or the licensee has

knowledge of the violation.

12. The procedures for the surrender of a license shall be:

(1) The director may, after ten days' notice by certified mail to the licensee at the address set forth on the license, stating the contemplated action and, in general, the grounds for such action and the date, time and place of a hearing on the action, and after providing the licensee with a reasonable opportunity to be heard prior to such action, revoke or suspend any license issued pursuant to sections 443.800 to 443.893 if the director finds that:

(a) The licensee has failed to comply with any provision of sections 443.800 to 443.893 or any order, decision, finding, rule[, regulation] or direction of the director lawfully made pursuant to the authority of sections 443.800 to 443.893; or

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the director to refuse to issue the license;

(2) Any licensee may surrender a license by delivering to the director written notice that the licensee thereby surrenders such license, but surrender shall not affect the licensee's civil or criminal liability for acts committed prior to surrender or entitle the licensee to a return of any part of the license fee.

443.887. 1. In addition to such other powers as may be prescribed by sections 443.800 to 443.893, the director may promulgate [regulations] **rules** consistent with the purpose of sections 443.800 to 443.893, including, but not limited to:

(1) Such rules [and regulations] in connection with the activities of licensees as may be necessary and appropriate for the protection of consumers in this state;

(2) Such rules [and regulations] as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of licensees [in making mortgage loans];

(3) Such rules [and regulations] as may define the terms used in sections 443.800 to 443.893 and as may be necessary and appropriate to interpret and implement the provisions of sections 443.800 to 443.893; and

(4) Such rules [and regulations] as may be necessary for the enforcement of sections 443.800 to 443.893.

2. The director may make such specific ruling, demands and findings as the director may deem necessary for the proper conduct of the mortgage lending industry.