

SECOND REGULAR SESSION

SENATE BILL NO. 728

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2663S.02I

AN ACT

To repeal sections 443.803, 443.816, 443.821, 443.833 and 443.859, RSMo, relating to residential mortgage brokers, and to enact in lieu thereof five new sections relating to the same subject.

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

Section A. Sections 443.803, 443.816, 443.821, 443.833 and 443.859, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 443.803, 443.816, 443.821, 443.833 and 443.859, to read as follows: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 loan to be secured by residential real estate;

(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;

(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

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

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 board, created in section 443.816;

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

(6) "Continuing education" or "certified course of continuing education", a course of continuing education relating to mortgage brokering consisting of twenty-four hours every two years of classroom study which is:

(a) Certified by the National Association of Mortgage Brokers, the Mortgage Bankers Association of America or any successor entities;
or

(b) Certified in a manner established by the director if the National Association of Mortgage Brokers, the Mortgage Bankers Association of America or any successor entities cease to exist.

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

(8) "Employee", an individual for whom a mortgage broker, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state and federal income taxes. "Employee" also includes any new shareholder, member, or partner of a licensee who acts as a loan originator or loan officer of the licensee, but for whom the registrant is prevented by law from making income tax withholdings.

[(7)] (9) "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)] (10) "Exempt entity", the following entities:

(a) Any 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 state or federal savings and loan association, savings bank or credit union or any consumer finance company licensed under sections 367.100 to 367.215, RSMo, which is actively engaged in consumer credit lending;

(c) Any insurance company authorized to transact business in this state;

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

(e) Any corporation of a federally chartered or state-chartered savings and loan association, savings bank or credit union;

(f) Any first-tier subsidiary of a national or state bank that has its principal place of business in this state, provided that 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;

(g) Any 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;

(h) Any mortgage banker as defined in subdivision **[(19)] (20)** of this subsection; or

(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;

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

(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;

(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 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;

[(m)] **(l)** Any person who originates, services or brokers residential mortgage loans and who receives no compensation for those activities, subject to the director's regulations regarding the nature and amount of compensation;

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

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

[(11)] **(13)** "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 existing, home mortgage 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)] **(14)** "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)] **(15)** "Lender", any person who either lends money for or invests money in residential mortgage loans;

[(14)] **(16)** "Licensee" or "residential mortgage licensee", a person who is licensed to engage in the activities regulated by sections 443.800 to 443.893;

(17) "Loan originator" or "loan officer", an employee of a mortgage broker who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges including an employee who solicits financial and mortgage information from the public for sale to another mortgage broker. The "loan originator" or "loan officer"

shall be licensed according to section 443.805 and that license shall be held by the employing mortgage broker;

[(15) "Loan broker" or "broker", a person exempted from licensing pursuant to subdivision (8) of this subsection, who performs the activities described in subdivisions (17) and (32) of this subsection;

(16)] **(18)** "Loan brokerage agreement", a written agreement in which a 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 from an investor for a borrower, a loan secured by residential real estate situated in Missouri or assisting an investor or a borrower in obtaining a loan secured by residential real estate in return for consideration;

(18)] **(19)** "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 an applicant for a residential mortgage loan;

[(19)] **(20)** "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;

(21) "Mortgage broker" or "broker", a person licensed pursuant to this chapter who performs mortgage brokering or mortgage brokerage services as defined in subdivision (22) of this subsection;

(22) "Mortgage brokering" or "mortgage brokerage service", the act of helping to obtain for an investor or from an investor for a borrower, a loan secured by residential real estate situated in Missouri or assisting an investor or a borrower in obtaining a loan secured by residential real estate in return for consideration;

[(20)] **(23)** "Mortgage loan" or "residential 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;

[(21)] **(24)** "Net worth", as provided in section 443.859;

[(22)] **(25)** "**Originate**" or "originating", the advertising, soliciting, taking applications, processing, closing, or issuing of commitments for, and funding of, residential mortgage loans;

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

[(24)] **(27)** "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)] **(28)** "Person", any individual, firm, partnership, corporation, company or association and the legal successors thereof;

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

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

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

[(29)] **(32)** "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;

(33) "Residential mortgage license certification course", a course of study consisting of sixty hours of education relating to mortgage brokering followed by a one hundred question examination. The sixty hours shall consist of twenty hours of core study and forty hours of elective study.

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

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

[(32)] **(36)** "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 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;

[(33)] (37) "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;

[(34)] (38) "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 rule any terms used in sections 443.800 to 443.893 for efficient and clear administration. **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, 2002, shall be invalid and void.**

443.816. There is hereby created in the division of finance a "Residential Mortgage Board" which shall have such powers and duties as are now or

hereafter conferred upon it by law. The board shall consist of five members who shall be appointed by the governor. The members of the board shall be residents of this state, and one of the members shall be a member of the Missouri Bar in good standing. Three members of the board shall be experienced in mortgage brokering and the remaining members of the board shall have no financial interest in any mortgage brokering business. Not more than three members of the board shall be members of the same political party. The term of office of each member shall be three years, except for those first appointed. Two shall be appointed for terms of two years and one shall be appointed for a term of one year. Members shall serve until their successors are duly appointed and have qualified. Each member shall serve for the remainder of the term for which the member was appointed. The board shall select one of the members as chairman and one of the members as secretary. **The president of the Missouri Association of Mortgage Professionals in office at the time shall, at least ninety days prior to the expiration of the term of a board member experienced in mortgage brokering, or as soon as feasible after a vacancy on the board otherwise occurs, submit to the director a list of five persons experienced in mortgage brokering and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri Association of Mortgage Professionals shall include in his or her letter of submittal a description of the method by which the names were chosen by the association.** Vacancies on the board shall be filled for the unexpired term in the same manner as in the case of an original appointment. The members of the board shall receive as compensation the sum of one hundred dollars per day while discharging their duties, and they shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. A majority of the members of the board shall constitute a quorum and the decision of a majority of a quorum shall be the decision of the board. The board shall meet upon call of the chairman, or of the director, or of any two members of the board, and may meet at any place in this state. The board shall:

(1) Approve or disapprove each regulation proposed by the director pertaining to mortgage brokering; and

(2) Hear and determine any appeal from a denial or revocation of a mortgage broker license or decision of the director pertaining to mortgage

brokering.

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

(1) The filing of an application; **after January 1, 2003, each applicant shall be required to include proof of satisfactory completion, within six months prior to the date of application of the residential mortgage license certification course and examination as defined in section 443.803;**

(2) The filing with the director of a listing of judgments entered against, and bankruptcy petitions by, the 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 applicant, and of the members thereof, if the applicant is a partnership or association, and of the officers and directors thereof if the 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 applicant of the denial with the reasons stated for such denial. An applicant may appeal such denial to the board.

443.833. 1. Licenses shall be renewed on the first anniversary of the date of issuance and every two years thereafter. Renewal application forms, **including evidence of satisfactory completion of the twenty-four hours of continuing education as defined in section 443.803** and fees shall be submitted to the director at least sixty days before the renewal date.

2. The director shall send 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, except when an extension for good cause 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 possesses documentation of the licensee's continuing activity for which the unrenewed 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, **including evidence of satisfactory completion of the twenty-four hours of continuing education as defined in section 443.803** 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.

443.859. Effective [May 21, 1998] **January 1, 2003**, every licensee shall have and maintain a net worth of not less than [twenty-five] **fifty** thousand dollars. The director may promulgate rules with respect to net worth definitions and requirements for 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.

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