

FIRST REGULAR SESSION

SENATE BILL NO. 435

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILSON.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1838S.04I

AN ACT

To repeal section 339.532, RSMo, and to enact in lieu thereof four new sections relating to fraudulent real estate transactions, with penalty provisions.

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

Section A. Section 339.532, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 339.532, 339.550, 407.725, and 442.383, RSMo, to read as follows:

339.532. 1. The commission may refuse to issue or renew any certificate or license issued pursuant to sections 339.500 to 339.549 for one or any combination of causes stated in subsection 2 of this section. The commission shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(1) Procuring or attempting to procure a certificate or license pursuant to section 339.513 by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification or licensure, or through any form of fraud or misrepresentation;

(2) Failing to meet the minimum qualifications for certification or licensure or renewal established by sections 339.500 to 339.549;

(3) Paying money or other valuable consideration, other than as provided for by section 339.513, to any member or employee of the commission to procure a certificate or license pursuant to sections 339.500 to 339.549;

(4) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 339.500 to 339.549 for any offense of which an essential element is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

(11) Accepting an appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) Violating the confidential nature of governmental records to which the person gained access through employment or engagement to perform an appraisal assignment or specialized appraisal services for a governmental agency;

(13) Violating any term or condition of a certificate or license issued by the commission pursuant to the authority of sections 339.500 to 339.549;

(14) Violation of any professional trust or confidence;

(15) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(16) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by sections 339.500 to 339.549 who is not licensed or certified and currently eligible to practice pursuant to sections 339.500 to 339.549;

(17) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(18) Disciplinary action against the holder of a license, certificate or other right to practice any profession regulated pursuant to sections 339.500 to 339.549, imposed by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(19) Knowingly communicates a false or fraudulent appraisal to any interested person or otherwise engages in any deceitful, fraudulent, or dishonest conduct.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the commission may, singly or in combination, publicly censure or place the person named in the complaint on probation on such terms and conditions as the commission deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke, the certificate or license. The holder of a certificate or license revoked pursuant to this section may not obtain certification as a state-certified real estate appraiser or licensure as a state-licensed real estate appraiser for at least five years after the date of revocation.

4. A certification of a state-certified real estate appraiser or a license of a state-licensed real estate appraiser that has been suspended as a result of disciplinary action by the commission shall not be reinstated, and a person may not obtain certification as a state-certified real estate appraiser or licensure as a state-licensed real estate appraiser subsequent to revocation, unless the applicant presents evidence of completion of the continuing education required by section 339.530 during the period of suspension or revocation as well as fulfillment of any other conditions imposed by the commission. Applicants for recertification, relicensure or reinstatement also shall be required to successfully complete the examination for original certification or licensure required by section 339.515 as a condition to reinstatement of certification or licensure, or recertification or relicensure subsequent to revocation.

339.550. A real estate appraiser shall, upon conviction, be guilty of a class A misdemeanor if such real estate appraiser violates subdivision (11) or (19) of subsection 2 of section 339.532. If a real estate appraiser knowingly communicates a false or fraudulent appraisal with the intent or knowledge that such appraisal will be employed to defraud a person of his

or her possessory interest in real estate or otherwise affect the marketability of title in such real estate, then the real estate appraiser shall be guilty of a class D felony upon conviction.

407.725. 1. For the purposes of this section, the following terms mean:

(1) "Consumer", an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes;

(2) "Goods", tangible chattel bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for such goods and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom;

(3) "Home solicitation", any transaction made at the consumer's primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation;

(4) "Person", an individual, partnership, corporation, limited liability company, association, or other group, however organized;

(5) "Services", work, labor, and services for other than a commercial or business purpose and including services furnished in connection with the sale or repair of goods;

(6) "Transaction", an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, such agreement.

2. The following unfair methods of competition and unfair or deceptive acts or practices, undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer, are unlawful where the home solicitation of a consumer during which a loan is made encumbers the primary residence of such consumer for the purposes of paying for home improvements and the transaction violates federal consumer credit protection laws and federal Trade Commission regulations that prohibit:

(1) The extension of mortgage credit secured by the consumer's dwelling without regard for the consumer's repayment ability;

(2) Payment under a home improvement contract from amounts extended as credit under a mortgage, except:

(a) In the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(b) At the election of the consumer, by a third party escrow agent in

the form of a written agreement signed by the consumer, creditor, and contractor before the date of payment; and

(3) The sale or assignment of certain mortgages without the provision of a notice stating that the mortgage is subject to special rules pursuant to the federal Truth in Lending Act.

3. A third party shall not be liable pursuant to this section, unless:

(1) There was an agency relationship between the party who engaged in the home solicitation and the third party; or

(2) The third party had actual knowledge of or participated in the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable pursuant to this section.

4. Any person who violates the provisions of this section is guilty of a class A misdemeanor. In addition to any fines, penalties, or sentences imposed by law, any person who is convicted of, or pleads guilty or nolo contendere to a violation of this section shall be required to make restitution.

442.383. 1. Any person who records or files, or who offers to have recorded or filed in the office of recorder of deeds any document purporting to convey, encumber, create a lien against, or otherwise affect the title to real property, knowing or having a reason to know that such document is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, shall be liable to the owner of such real property for the sum of not less than one thousand dollars or for actual damages caused thereby, whichever is greater, together with reasonable attorney fees and court costs.

2. Any person who intentionally or knowingly offers to have recorded or filed in the office of the county clerk and recorder of deeds any forged or fraudulent document described in subsection 1 of this section shall, upon conviction, be guilty of a class C felony.

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