

FIRST REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 20

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS GOODE, YECKEL AND SIMS.

Pre-filed December 1, 1998, and 1,000 copies ordered printed.

Read 2nd time January 12, 1999, and referred to the Committee on Insurance and Housing.

Reported from the Committee February 11, 1999, with recommendation that the bill do pass.

Taken up for Perfection March 1, 1999. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S0018.02P

## AN ACT

To amend chapter 67, RSMo, by adding thereto twenty-two new sections relating to community improvement, with penalty provisions and with a termination date.

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

Section A. Chapter 67, RSMo, is amended by adding thereto twenty-two new sections, to be known as sections 67.1600, 67.1603, 67.1606, 67.1609, 67.1612, 67.1615, 67.1618, 67.1621, 67.1624, 67.1627, 67.1630, 67.1633, 67.1636, 67.1639, 67.1642, 67.1645, 67.1648, 67.1651, 67.1654, 67.1657, 67.1660 and 67.1663, to read as follows:

**67.1600. For the purposes of sections 67.1600 to 67.1663, the following terms shall mean:**

**(1) "Bona fide offer", an offer made in good faith and for a valuable consideration to purchase a qualified residence;**

**(2) "Certificate of participation", the duly notarized document of membership in a program, signed by the qualified applicant and by an authorized representative of the governing commission, which specifies the location and description of the guaranteed residence, its guaranteed value, the registration date, and which has attached a program appraisal for the guaranteed residence;**

**(3) "Community organization", a not for profit organization which has been registered with this state for at least five years as a not for profit organization, which qualifies for tax exempt status under Section 501(c)(3) or 501(c)(4) of the United States Internal Revenue Code of 1986, as now or hereafter amended, which continuously**

**maintains an office or business location within the area of a program together with a current listed telephone number, and whose members reside within the area of a program;**

**(4) "District", a contiguous geographic area described in a petition or defined by an ordinance enacted by the governing body of a municipality or in the unincorporated area of a county of the first classification with a population greater than nine hundred thousand. The governing body shall have the authority to correct errors in the legal description of the district boundaries described in the petition or in the ordinance;**

**(5) "Eligible applicant", a natural person who is the owner of a qualified residence within the area of a program who shall occupy or have a family member who occupies such qualified residence as the principal place of residence;**

**(6) "Family member", a spouse, child, stepchild, parent, grandparent, brother, sister, or any such relations of the spouse of the member;**

**(7) "Governing commission", the nine-member (or eighteen-member in the case of a merged program) governing body which is authorized by voter approval of the creation of a home equity program (or merger of programs) as provided in sections 67.1600 to 67.1663 and which is appointed by the mayor of the municipality or county executive of a county of the first classification with a population greater than nine hundred thousand in which the program has been approved with the approval of the governing body of the municipality, or the governing body of the county, seven or fourteen in the case of a merged program, of whom shall be appointed from a list or lists of nominees submitted by a community organization or community organizations as defined in sections 67.1600 to 67.1663;**

**(8) "Gross selling value", the total consideration to be paid for the purchase of a guaranteed residence, and shall include any amount that the buyer or prospective buyer agrees to assume on behalf of a member, including broker commissions, points, legal fees, personal financing, or other items of value involved in the sale;**

**(9) "Guarantee fund", the funds collected under the provisions of sections 67.1600 to 67.1663 for the purpose of guaranteeing the property values of members within the area of a program;**

**(10) "Guaranteed residence", a qualified residence, including condominium property as defined in chapter 448, RSMo, for which a certificate of participation has been issued, which is owned by the eligible applicant, which is described in the certificate of participation, and which is entitled to coverage under sections 67.1600 to 67.1663;**

**(11) "Guaranteed value", the appraised valuation based upon a standard of current market value as of the registration date on the qualified residence as determined by a program appraiser pursuant to accepted professional appraisal**

standards and which is authorized by the commission for the registration date. The guaranteed value shall be used solely by the commission for the purpose of administering the program and shall remain confidential;

(12) "Member", the owner of a guaranteed residence;

(13) "Owner", a natural person who is the legal titleholder or who is the beneficiary of a trust which is the legal titleholder;

(14) "Physical perils", physical occurrences such as, but not limited to, fire, windstorm, hail, nuclear explosion, seepage, war, insurrection, wear and tear, cracking, settling, vermin, rodents, insects, vandalism, pollution or contamination, and all such related occurrences or acts of God;

(15) "Program", means the guaranteed home equity program governed by a specific home equity commission;

(16) "Program appraisal", a real estate appraisal conducted by a program appraiser for the purpose of establishing the guaranteed value of a qualified residence under a program and providing a general description of the qualified residence. The program appraisal shall be used solely by the governing commission for the purpose of administering the program and shall remain confidential except for transactions between family members;

(17) "Program appraiser", a real estate appraiser who is state licensed or state certified pursuant to sections 339.500 to 339.545, RSMo;

(18) "Program guidelines", those policies, rules, regulations, and bylaws established from time to time by the governing commission to explain, clarify, or modify the program in order to fulfill its goals and objectives;

(19) "Qualified residence", a building:

(a) Located in the area of a program and having at least one, but not more than six, dwelling units, however, in the case of owner occupied condominiums there is no limit on the number of dwelling units; and

(b) Classified by county ordinance as residential and assessed for property tax purposes;

(20) "Registration date", the date of receipt by the governing commission of the registration fee and a completed application of a qualified applicant for participation in a program;

(21) "Registration fee", the fee which is established by the governing commission to defray the cost of a program appraisal on a qualified residence.

67.1603. 1. In a municipality with more than five hundred inhabitants and less than three hundred thousand inhabitants, the question of creating a home equity program within the entire municipality shall be initiated by ordinance of the governing body of the municipality or by a petition signed by not less than five percent of the

**total number of registered voters of the municipality who voted in the last gubernatorial election, the registered voters of which are eligible to sign the petition. It shall be the duty of the election authority having jurisdiction over such municipality to submit the question of creating a home equity program to the voters within the municipality at the regular election specified in the ordinance or petition initiating the question.**

**2. In a municipality with more than three hundred thousand inhabitants, the question of creating a home equity program within a portion of a municipality described as a township, district or ward shall be initiated by ordinance of the governing body of the municipality or by a petition signed by not less than five percent of the total number of registered voters of the municipality who voted in the last gubernatorial election, the registered voters of which are eligible to sign the petition. It shall be the duty of the election authority having jurisdiction over such municipality to submit the question of creating a home equity program to the voters within the municipality at the regular election specified in the ordinance or petition initiating the question. If the question is initiated by petition and if the requisite number of signatures is not obtained in any township, district or ward included within the area described in the petition, then the petition shall be valid as to the area encompassed by those townships, districts or wards for which the requisite number of signatures is obtained and any such township, district or ward for which the requisite number of signatures is not obtained shall be excluded from the area.**

**3. In a county of the first classification with a population greater than nine hundred thousand, the question of creating a home equity program within a contiguous unincorporated area included entirely within any such county shall be initiated by ordinance of the governing body of the county, or by a petition signed by not less than five percent of the total number of registered voters within each township, district or ward to be served who voted in the last gubernatorial election, the registered voters of which are eligible to sign the petition. It shall be the duty of the election authority having jurisdiction over such county to submit the question of creating a home equity program to the voters within the area to be served at the regular election specified in the ordinance or petition initiating the question. If the question is initiated by petition and if the requisite number of signatures is not obtained in any township, district or ward included within the area described in the petition, then the petition shall be valid as to the area encompassed by those townships, districts or wards for which the requisite number of signatures is obtained and any such township, district or ward for which the requisite number of signatures is not obtained shall be excluded from the area.**

**4. A petition initiating a question described in this section shall be filed with the**

**election authority having jurisdiction over the municipality or county. The petition shall be filed in the manner provided in the general election law. An ordinance, or petition initiating a question described in this section shall specify the election at which the question is to be submitted. The election on such question shall be held in accordance with general election law. Such question, and the ordinance, or petition initiating the question, shall include a description of the area, the name of the proposed home equity program, and the maximum rate at which the home equity program shall be able to levy a property tax. All of that area within the geographic boundaries of the area described in such question shall be included in the program, and no area outside the geographic boundaries of the area described in such question shall be included in the program. If the election authority determines that the description cannot be included within the space limitations of the ballot, the election authority shall prepare large printed copies of a notice of the question, which shall be prominently displayed in the polling place of each township or ward in which the question is to be submitted. No new program shall be established by petition unless the area to be served by the program contains five hundred or more residential properties.**

**5. Whenever a majority of the voters on such public question approve the creation of a home equity program as certified by the proper election authorities, the governing body of any such municipality or county shall appoint nine individuals, to be known as commissioners, to serve as the governing body of the home equity program. The governing body shall choose seven of the nine individuals to be appointed to the governing commission from nominees submitted by real property owners or community organizations as defined in sections 67.1600 to 67.1663. A community organization may recommend up to twenty individuals to serve on a governing commission. No fewer than five commissioners serving at any one time shall reside within the area of the program. In a municipality with more than five hundred and less than three hundred thousand inhabitants, the governing body of the municipality may serve as the governing body of the home equity program or, in the alternative, the governing body may appoint a five-member governing commission to govern the home equity program. The mayor of any municipality whose governing body serves as the governing body of the home equity program may appoint a five-member advisory board to make recommendations to the governing body of the municipality in relation to the home equity program. Board members shall serve without compensation except for reasonable expenses incurred in the performance of duties as a board member. The governing body of the municipality shall establish the terms of office of the governing commission or advisory board members, and no member shall serve more than three consecutive terms.**

**6. Upon creation of a governing commission in a municipality with three**

**hundred thousand or more inhabitants, the terms of the initial commissioners shall be as follows: three shall serve for one year, three shall serve for two years, and three shall serve for three years and until a successor is appointed and qualified. All succeeding terms shall be for three years, or until a successor is appointed or qualified, and no commissioner may serve more than two consecutive terms. Commissioners shall serve without compensation except for reimbursement for reasonable expenses incurred in the performance of duties as a commissioner. A vacancy in the office of a member of a commission shall be filled in like manner as an original appointment. All proceedings and meetings of the governing commission shall be conducted in accordance with the provisions of chapter 610, RSMo.**

**67.1606. 1. If the creation of an existing home equity program was initiated by petition and if a township, district or ward was excluded from the area because the requisite number of signatures was not obtained, the excluded township, district or ward may be added to the area of the program as provided in this section if the excluded township, district or ward is contiguous to the existing program.**

**2. Upon the filing of a petition signed by the requisite number of registered voters of a township, district or ward that is contiguous to an existing home equity program, the township, district or ward may be added to the area of the program as provided in this section.**

**3. If a petition signed by not less than five percent of the total number of registered voters within the township, district or ward who voted in the last gubernatorial election is filed with the proper election authority, and if the governing body of the municipality or county consents, by ordinance or resolution, to adding the excluded township, district or ward to the area of the program, the election authority shall submit the question of adding the excluded township, district or ward to the area of the program to the voters of the excluded township, district or ward at the regular election specified in the petition. The petition shall be filed and the election shall be conducted as provided in the general election law. The petition and the question submitted shall describe the township, district or ward, identify the program to which the township, district or ward is proposed to be added, and state the maximum rate at which the program shall be authorized to levy a property tax, which rate shall be the same as the existing maximum rate for the program.**

**4. If a majority of the voters of the township, district or ward voting on the question are in favor of adding the township, district or ward to the program, the township, district or ward shall be part of the area of the program.**

**67.1609. 1. Whenever the question of merging two existing and contiguous home equity programs within a municipality or county or which are included within two or more such political subdivisions is initiated by ordinance of the governing commissions**

**of both programs proposed to be merged or by a petition signed by not less than five percent of the total registered voters within the area of each program proposed to be merged who voted in the last gubernatorial election, the registered voters of which are eligible to sign the petition, it shall be the duty of the election authority having jurisdiction over such municipality, municipalities or county to submit the question of merging the programs to the voters of each program at the regular election specified in the ordinance or petition initiating the question. A petition initiating a question described in this section shall be filed with the election authority having jurisdiction over the municipality, municipalities or county. The petition shall be filed in the manner provided in the general election law. An ordinance or petition initiating a question described in this section shall specify the election at which the question is to be submitted. The election on such question shall be held in accordance with general election law. Such question, and the ordinance or petition initiating the question, shall include a description of the area of the two programs, the name of the proposed merged home equity program, and the maximum rate at which the merged home equity program shall be able to levy a property tax. All of that area within the geographic boundaries of the area of the two programs described in such question shall be included in the merged program, and no area outside the geographic boundaries of the area of the two programs described in such question shall be included in the merged program. If the election authority determines that the description cannot be included within the space limitations of the ballot, the election authority shall prepare large printed copies of a notice of the question, which shall be prominently displayed in the polling place of each township, district or ward in which the question is to be submitted. Nothing shall prohibit two or more programs from jointly administering or contracting with each other or another entity for the purpose of administering the programs without merging the programs.**

**2. Whenever a majority of the voters on such public question in each existing program approve the merger of home equity programs as certified by the proper election authorities, the commissioners of each of the merged programs shall serve as the governing body of the merged home equity program.**

**3. The commissioners serving at any one time shall reside within the area of the merged program. Upon creation of a merged program, a commissioner shall serve for the term for which he or she was appointed and until a successor is appointed and qualified. In municipalities with a population of three hundred thousand or more, all succeeding terms shall be for three years, or until a successor is appointed and qualified, and no commissioner may serve more than two consecutive terms. Commissioners shall serve without compensation except for reimbursement for reasonable expenses incurred in the performance of duties as a commissioner. A**

**vacancy in the office of a member of the commission shall be filled in like manner as an original appointment. All proceedings and meetings of the governing commission shall be conducted in accordance with the provisions of chapter 610, RSMo, as now or hereafter amended. Upon creation of a merged program, the members of each of the two programs merged into the merged program shall be members of the merged program, the guarantee funds of each shall be merged, and they shall be operated as a single program.**

**67.1612. The duties and functions of the governing commission of a home equity program shall include the following:**

**(1) To select an administrator to conduct or supervise the day-to-day operation of the program, including but not limited to the administration of homeowner applications for participation in the program and homeowner claims against the guarantee fund;**

**(2) To establish policies, rules, regulations, bylaws, and procedures for both the governing commission and the program. No policies, rules, regulations, or bylaws shall be adopted by the governing commission without prior notice to the residents of the area of a program and an opportunity for such residents to be heard;**

**(3) To provide annual status reports on the program to the governing body of the municipality or county;**

**(4) To establish guaranteed value standards which are directly linked to the program appraisal, to approve guarantee values, and to establish requirements for program appraisers consistent with subdivision (16) of section 67.1600. In no event shall the program guidelines adopted by the governing commission provide for selecting appraisers based on criteria other than the quality and timeliness of the appraisals provided to the governing commission;**

**(5) To manage, administer, and invest the guarantee fund under the supervision of the local governing body;**

**(6) To liquidate acquired assets to maintain the guarantee fund;**

**(7) To participate in arbitration required under the program, including gathering information from all necessary persons, parties, or documents required to proceed with such arbitration;**

**(8) To employ necessary personnel, acquire necessary office space, enter into contractual relationships and disburse funds in accordance with the provisions of sections 67.1600 to 67.1663; and**

**(9) To perform such other functions in connection with the program and the guarantee fund as required under sections 67.1600 to 67.1663.**

**67.1615. 1. Eligibility for membership in the program shall be limited to the owner of a residential property within the area of a home equity program.**



**2. An eligible applicant shall apply to the program by submitting an application and a registration fee as determined by the governing commission. Prior to accepting a registration fee, the governing commission shall inform the applicant of the rights, duties, and obligations of both the member and the governing commission under the program. Upon receipt of the registration fee, the governing commission shall have the residence of the applicant appraised by a program appraiser at the expense of the program to determine the guaranteed value of the residence. If the appraisal, at the time completed by a program appraiser, differs by more than fifteen percent from the market value as determined in the most recent assessment performed by the county assessor, the program administrator shall notify the governing commission and provide a written justification for the difference between the guaranteed value of the residence and the market value as determined in the most recent assessment before the commission accepts the guaranteed residence into the program.**

**3. At its option, the governing commission may require a second program appraisal of the qualified residence, also at the expense of the program, if it determines that the first program appraisal is incomplete, inadequate, or inaccurate.**

**4. A certificate of participation shall then be issued to the eligible applicant certifying membership in the program and stating the guaranteed value, the registration date, the address of the guaranteed residence and description of the conditions and exclusions of the program. An authorized program appraisal shall be attached to the certificate of participation.**

**67.1618. A member or the estate of a member participating in a program created under the provisions of sections 67.1600 to 67.1663 shall be paid one hundred percent of the difference between the guaranteed value as determined by the program and the gross selling value as determined in section 67.1621 if the guaranteed value is greater than the gross selling value. The guarantee provided by the program shall only apply to sales made three years or more after the date of issuance of the certificate of participation and shall be provided subject to all of the terms, conditions, and stipulations of the program. The guarantee provided by the program shall extend only to those who qualified as members at the time of their application, or to the estates of members; provided that the estate applies within two years of the member's death or within five years after the date of issuance of the certificate of participation, whichever is later. A member of a program agrees to abide by all conditions, stipulations, and provisions of a program and shall not be eligible for protection and shall not receive the guarantee unless all such conditions, stipulations and provisions have been met. Any member failing to abide by the conditions, stipulations and provisions of a program or who engages in fraud, misrepresentation, or concealment in any process involving a program forfeits both the registration fee and any claim to the guarantee.**

**67.1621. 1. In order to be eligible for payment under a program created pursuant to sections 67.1600 to 67.1663, a member shall follow the program guidelines adopted by the governing commission as well as the procedures set forth in this section.**

**2. A member shall file a notice of intent to sell with the governing commission in accordance with program guidelines if and when the member intends to place the guaranteed residence on the market for sale. Upon receipt of a notice of intent to sell, the governing commission shall provide the member with a copy of this section and a written description of the rights and responsibilities of both the member and the governing commission and the procedures for obtaining benefits; provided, however, that such information provided by the governing commission shall not restrict or advise the member with respect to the selection of a real estate broker or agent. The information shall be delivered to the member either in person or by registered mail. A member is not eligible to file notice of intent to sell until at least three years after the member's registration date.**

**3. A member is required to offer the guaranteed residence for sale according to the program guidelines, including the utilization of complete and proper methods for listing residential property, listing the guaranteed residence at a price equal to or greater than the guaranteed value on which reasonably can be expected to attract buyers, and providing reasonable access for potential buyers to see the guaranteed residence.**

**4. A member may list the guaranteed residence in accordance with program guidelines with a real estate broker of the member's choice for up to ninety days following the date on which the member listed the residence.**

**5. Within sixty days of receipt of a notice of intent to sell, the governing commission has the right to have the guaranteed residence inspected by a program appraiser, at the governing commission's expense, in order to determine if the guaranteed residence is in substantially the same condition as described by the program appraisal attached to the certificate of participation. If the guaranteed residence fails to meet this standard, the following procedures shall be followed:**

**(1) The program appraiser shall determine the percentage depreciation of the guaranteed residence due to failure to maintain the premises or due to physical perils or other causes not covered by the program;**

**(2) This percentage figure shall be multiplied by the guaranteed value to determine the dollar depreciation;**

**(3) This dollar depreciation shall be subtracted from the guaranteed value to derive a lower guaranteed value to be used for the purpose of determining the amount of payment under the program.**

**6. A member shall make the guaranteed residence available to a program**

appraiser within a reasonable time within this sixty-day period after receipt of notice from the commission that an inspection under subsection 5 of this section is required, or the member's coverage under the program shall be null, void and of no further effect, and the member's registration fee shall be forfeited.

7. Ninety days after listing the guaranteed residence, a member shall be eligible to file a notice of intent to claim with the governing commission, in accordance with guidelines established by the governing commission, attesting to the fact that the member has followed program guidelines in offering the guaranteed residence for sale, that the member is unable to obtain an offer for purchase of the guaranteed residence for at least its guaranteed value, and that the member intends to file a claim against the program. Such notice shall include verifiable evidence of placement of the guaranteed residence on the market, the dates such placement took place, and shall list all reasonable offers to buy the property. Verifiable evidence may include a copy of advertisements for sale, a contract with a licensed real estate broker, or other evidence satisfactory to a majority of the governing commission.

8. Upon receipt of the notice of intent to claim, the governing commission has sixty days during which it shall require the member to list the guaranteed residence at a price that the governing commission deems reasonable with a real estate broker of the member's choosing. The real estate broker chosen by the member shall advertise the guaranteed residence throughout the residential market area typically used in the region of the state in which the program is located.

9. During the ninety-day period described in subsection 7 of this section, the member shall forward to the governing commission all offers of purchase by either personal delivery or registered mail. If the member receives an offer of purchase which can reasonably be expected to be consummated if accepted and whose gross selling value is greater than the guaranteed value of the guaranteed residence, then no benefits may be claimed under the program. If the member receives an offer to purchase at a gross selling value that is less than the guaranteed value, the governing commission shall, within five working days of the receipt of such offer, either:

(1) Approve the offer, in which case the governing commission shall authorize the payment of the amount afforded under sections 67.1600 to 67.1663 upon receipt of verifiable evidence of the sale of the guaranteed residence subject to the following conditions:

(a) Sales involving eminent domain shall be covered as set forth in section 67.1630;

(b) Sales subsequent to an insured property and casualty loss shall be guaranteed for the guaranteed value as determined according to subsection 5 of this section;

**(c) Contract sales shall be guaranteed as determined by the guaranteed value in subsection 5 of this section, however proceeds payable from the program shall be disbursed in equal annual installments over the life of the contract; or**

**(2) Reject the offer, in which case the member shall continue showing the guaranteed residence until the termination of the sixty-day period.**

**Any offer that the governing commission deems not to be a bona fide offer shall be rejected by the governing commission. Unless the member and the governing commission otherwise agree, the governing commission's failure to act upon an offer within five working days shall be deemed to be a rejection of the offer.**

**67.1624. No guarantee is afforded by the program until sixty days after a member files a notice of intent to claim. Furthermore, the governing commission shall be required to make payments to a member only upon receipt of verifiable evidence of the actual sale of the guaranteed residence in accordance with the terms agreed upon between the member and the governing commission at the time the governing commission authorized payment. If a member rejects an offer for purchase which has been submitted to and approved by the governing commission, the governing commission or program shall not be liable for any future guarantee payment larger than that authorized for this proposed sale.**

**67.1627. Except as otherwise provided in sections 67.1600 to 67.1663, payments under the program as provided in section 67.1618 shall not be made until the sale of the guaranteed residence has closed and title has passed or the beneficial interest has been transferred.**

**67.1630. When a guaranteed residence is to be acquired through the use of eminent domain by a condemning body, the following procedures shall apply:**

**(1) If the member rejects an offer from the condemning body equal to or greater than the guaranteed value, then no benefits may be claimed under the program;**

**(2) If the condemning body offers less than the guaranteed value, the governing commission may either:**

**(a) Pay one hundred percent of the difference between the guaranteed value and the offered price if the member agrees to sell at the offered price; or**

**(b) Advise the member that the offer is inadequate and should be refused. If the member refuses the offer and the final court determination of the value of the property is less than the guaranteed value, then the program shall pay one hundred percent of the difference between the judgment and the guaranteed value.**

**67.1633. 1. A member has the option of applying for a new program appraisal by a program appraiser in order to establish a new certificate of participation with a new registration date. The governing commission may exercise the right to require a second program appraisal in accordance with the procedures described in section**

**67.1615. This new guaranteed value shall be subject to the following conditions:**

**(1) A new guaranteed value established solely for the purpose of determining a property's increased value due to inflation may not be requested by the member until at least three years have elapsed from the most recent registration date;**

**(2) A new guaranteed value established due to home improvements shall be granted only when the value of the home improvements exceed five thousand dollars;**

**(3) A member may not initiate a claim against the program based upon the new guaranteed value until at least three years after the new registration date. Until that time, coverage shall be based on the most recent certificate of participation which is at least three years old and the guaranteed value set forth in that certificate of participation;**

**(4) If the governing commission, by majority vote, determines that the application for a new appraisal is due to substantial property improvements on the guaranteed residence, then the application fee for the appraisal shall be one-half of the registration fee then being charged by the program;**

**(5) If the governing commission, by a majority vote, concludes that the application for a new appraisal is not due to substantial property improvements, the application fee for the new appraisal shall be the amount of the registration fee then being charged by the program;**

**(6) A new guaranteed value shall be subject to all of the conditions, stipulations, and provisions of sections 67.1600 to 67.1663.**

**2. After following the above procedures, the member shall be issued a new certificate of participation which shall state the new guaranteed value and registration date.**

**3. A member may request a new guaranteed value and registration date only once per year.**

**67.1636. 1. If a member or applicant disagrees with the guaranteed value, the dollar depreciation due to failure to maintain the premises, or the dollar depreciation due to physical perils as determined by the program appraiser and approved by the governing commission, the member may appeal in writing to the governing commission within thirty days of the approval of the guaranteed value or the dollar depreciation by the governing commission. The governing commission shall respond in writing to this appeal within thirty days of its receipt.**

**2. If the member still disagrees with the governing commission, the member may submit a written request for arbitration to the governing commission within thirty days of receiving the written response to the appeal.**

**3. All such requests for arbitration shall be settled in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Judgment**

upon the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction.

4. The determination made pursuant to such arbitration procedure shall be final and binding on the member, the governing commission and all other parties.

67.1639. 1. Each governing commission and program created under the provisions of sections 67.1600 to 67.1663 shall maintain a guarantee fund for the purposes of paying the costs of administering the program and extending protection to members pursuant to the limitations and procedures set forth in sections 67.1600 to 67.1663.

2. The guarantee fund shall be raised by means of an annual tax levied on all real property within the area of the program. The rate of this tax may be changed from year to year by majority vote of the governing commission but in no case shall it exceed a rate of fifteen hundredths of a percent of the equalized assessed valuation of all real property in the area of the program, or the maximum tax rate approved by the voters of the area at the election which created the program or, in the case of a merged program, the maximum tax rate approved by the voters at the election authorizing the merger, whichever rate is lower. The commissioners shall cause the amount to be raised by taxation in each year to be certified to the county clerk or, in a city not within a county, to the taxing authority of such city in the manner provided by law, and any tax so levied and certified shall be collected and enforced in the same manner and by the same officers as those taxes for the purposes of the county and city within which the area of the commission is located. Any such tax, when collected, shall be paid over to the proper officer of the commission who is authorized to receive such tax. The governing commission may issue tax anticipation warrants against the taxes to be assessed for the calendar year in which the program is created and for the first full calendar year after the creation of the program.

3. The moneys deposited in the guarantee fund shall, as nearly as practicable, be fully and continuously invested or reinvested by the governing commission in investment obligations which shall be in such amounts, and shall mature at such times, that the maturity or date of redemption at the option of the holder of such investment obligations shall coincide, as nearly as practicable, with the times at which moneys will be required for the purposes of the program. For the purposes of this section investment obligation shall mean direct general municipal, state, or federal obligations which at the time are legal investments under the laws of this state and the payment of principal of and interest on which are unconditionally guaranteed by the governing body issuing them.

4. The guarantee fund, including principal, interest, fees and all other sources of income, shall be used solely and exclusively for the purpose of providing guarantees

to members of the particular guaranteed home equity program and for reasonable salaries, expenses, bills, and fees incurred in administering the program, and shall be used for no other purpose. Any municipality with a population of less than one thousand shall administer the program in conjunction with another such program in the same county.

5. The guarantee fund shall be maintained, invested, and expended exclusively by the governing commission of the program for whose purposes it was created. Under no circumstance shall the guarantee fund be used by any person or persons, governmental body, or public or private agency or concern other than the governing commission of the program for whose purposes it was created. Under no circumstances shall the guarantee fund be commingled with other funds or investments. No commissioner or family member of a commissioner, or employee or family member of an employee, may receive any financial benefit, either directly or indirectly, from the guarantee fund. Nothing in this subsection shall be construed to prohibit payment of expenses to a commissioner in accordance with section 67.1609 or payment of salaries or expenses to an employee in accordance with this section. As used in this subdivision, "family member" means a spouse, child, stepchild, parent, brother, or sister of a commissioner or a child, stepchild, parent, brother, or sister of a commissioner's spouse.

6. An independent audit of the guarantee fund and the management of the program shall be conducted annually and made available to the public through any office of the governing commission or a public facility such as a local public library located within the area of the program.

67.1642. A home equity program may be terminated only by approval of the local governing bodies of the municipality or county government. In terminating the program, the governing commission shall refund the remaining balance of the guarantee fund, if any, after all potential liabilities have been satisfied, to the then current property taxpayers of all real property within the area of the commission in an equitable manner proportionate to the manner in which the guarantee fund was raised.

67.1645. A program created under sections 67.1600 to 67.1663 provides a guarantee only against specifically local adverse housing market conditions within the area of the program as they may differ from regional or national housing conditions. A program shall not provide relief from adverse regional or national housing market conditions as they may affect local housing conditions. A program shall not guarantee against a decline in the value of housing due to economic forces such as a national or regional recession or depression. In the event of a regional decline in the value of housing in the regional or national housing markets, the governing commission may temporarily suspend coverage under the program in order to protect the fiscal integrity of the guarantee fund. For the purposes of this section, a regional decline in the value

of housing is defined as a five percent annual decline in the median value of existing houses in any twelve month period for the nation, Midwest region, or state of Missouri, according to statistics published by the national association of realtors.

**67.1648.** If the guarantee fund becomes depleted and payments of guarantees under the program cannot be made in a timely fashion as required by the program guidelines, the governing commission may temporarily suspend the registration of new members and borrow funds against future tax revenues until such time as the guarantee fund is sufficiently restored. Under no circumstances shall the indebtedness or obligations of a program or a governing commission become an indebtedness or obligation of either the municipality or county in which the program is located or the state of Missouri.

**67.1651. 1.** No commissioner, officer or employee, whether on salary, wages or voluntary basis shall be personally liable and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities unless the act or omission involved willful or wanton conduct.

**2.** A program shall indemnify each commissioner, officer and employee, whether on salary, wages or voluntary basis against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney fees, and any other liabilities incurred by, imposed upon, or suffered by such individual in connection with or resulting from any claim, action suit or proceeding, actual or threatened, arising out of or in connection with the performance of program duties. Any settlement of any claim shall be made with prior approval of the governing commission in order for indemnification as provided in this section to be available.

**3.** The immunity and indemnification provided by a program under this section shall not cover any acts or omissions which involve willful or wanton conduct, breach of good faith, intentional misconduct, knowing violation of the law, or for any transaction from which such individual derives an improper personal benefit.

**67.1654.** No lawsuit or any other type of legal action brought under the terms of sections 67.1600 to 67.1663 shall be sustainable in a court of law or equity unless all conditions, stipulations, and provisions of the program have been complied with, and unless the suit is brought within twelve months after the event which is the subject of the legal action.

**67.1657.** If insurance or other form of payment is available to and carried by a member to provide protection similar to that provided by a program, the governing commission shall not be liable for a greater proportion of the loss than the amount provided by the program bears to the total amount available from all sources.



**67.1660. 1. No provision of sections 67.1600 to 67.1663 and no procedure, regulation, or bylaw of a governing commission and program created under the provisions of sections 67.1600 to 67.1663 shall abridge a member's right to forfeit the registration fee and guarantee and withdraw from the program at any time and sell the guaranteed residence in any legal manner he or she sees fit.**

**2. No provision of sections 67.1600 to 67.1663 or any procedure, regulation, or bylaw of a governing commission and program created under the provisions of sections 67.1600 to 67.1663 is intended as, and none shall be used as, a means of discriminating against any individual on the basis of ethnic background, gender, race or religion.**

**67.1663. Any person violating the provisions of sections 67.1600 to 67.1663 or any procedure, regulation, or bylaw of a governing commission and program created under the provisions of sections 67.1600 to 67.1663 shall be guilty of a class A misdemeanor and fined as provided by law.**

Section B. The provisions of sections 67.1600 to 67.1663 shall expire on December 31, 2010.

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Bill

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