

SECOND REGULAR SESSION

HOUSE BILL NO. 2175

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ZWEIFEL (Sponsor), TALBOY, PAGE, WALSH, YAEGER, BAKER (25), BURNETT, WILDBERGER, LeVOTA, ROBINSON, SPRENG, WHORTON, SCHIEFFER, LOW (39), DARROUGH AND ZIMMERMAN.

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D. ADAM CRUMBLISS, Chief Clerk

4881L.01I

AN ACT

To repeal sections 443.803, 443.805, 443.810, and 443.812, RSMo, and to enact in lieu thereof four new sections relating to mortgage brokers, with a penalty provision.

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

Section A. Sections 443.803, 443.805, 443.810, and 443.812, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 443.803, 443.805, 443.810,
3 and 443.812, to read as follows:

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

2 (1) "Advertisement", the attempt by publication, dissemination or circulation to induce,
3 directly or indirectly, any person to apply for a loan to be secured by residential real estate;

4 (2) "Affiliate":

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

8 (b) Any entity:

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 12 b. A majority of the directors or trustees of which constitute a majority of the persons
13 holding any such office with the licensee or any company that controls the licensee;
- 14 (c) Any company, including a real estate investment trust, that is sponsored and advised
15 on a contractual basis by the licensee or any subsidiary or affiliate of the licensee;
- 16 (3) "Annual audit", a certified audit of the licensee's books and records and systems of
17 internal control performed by a certified public accountant in accordance with generally accepted
18 accounting principles and generally accepted auditing standards;
- 19 (4) "Board", the residential mortgage board, created in section 443.816;
- 20 (5) "Borrower", the person or persons who use the services of a loan broker, originator
21 or lender;
- 22 (6) "Director", the director of the division of finance within the department of economic
23 development;
- 24 (7) "Escrow agent", a third party, individual or entity, charged with the fiduciary
25 obligation for holding escrow funds on a residential mortgage loan pending final payout of those
26 funds in accordance with the terms of the residential mortgage loan;
- 27 (8) "Exempt entity", the following entities:
- 28 (a) Any bank or trust company organized under the laws of this or any other state or any
29 national bank or any foreign banking corporation licensed by the division of finance or the
30 United States Comptroller of the Currency to transact business in this state;
- 31 (b) Any state or federal savings and loan association, savings bank or credit union or any
32 consumer finance company licensed under sections 367.100 to 367.215, RSMo, which is actively
33 engaged in consumer credit lending;
- 34 (c) Any insurance company authorized to transact business in this state;
- 35 (d) Any person engaged solely in commercial mortgage lending or any person making
36 or acquiring residential or commercial construction loans with the person's own funds for the
37 person's own investment;
- 38 (e) Any service corporation of a federally chartered or state-chartered savings and loan
39 association, savings bank or credit union;
- 40 (f) Any first-tier subsidiary of a national or state bank that has its principal place of
41 business in this state, provided that such first-tier subsidiary is regularly examined by the
42 division of finance or the Comptroller of the Currency or a consumer compliance examination
43 of it is regularly conducted by the Federal Reserve;
- 44 (g) Any person engaged solely in the business of securing loans on the secondary market
45 provided such person does not make decisions about the extension of credit to the borrower;
- 46 (h) Any mortgage banker as defined in subdivision (19) of this subsection; or

47 (i) Any wholesale mortgage lender who purchases mortgage loans originated by a
48 licensee provided such wholesale lender does not make decisions about the extension of credit
49 to the borrower;

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

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

55 (l) Any person licensed pursuant to the real estate agents and brokers licensing law,
56 chapter 339, RSMo, who engages in servicing or the taking of applications and credit and
57 appraisal information to forward to a licensee or an exempt entity for transactions in which the
58 licensee is acting as a real estate broker and who is compensated by either a licensee or an
59 exempt entity;

60 (m) Any person who originates, services or brokers residential mortgagee loans and who
61 receives no compensation for those activities, subject to the director's regulations regarding the
62 nature and amount of compensation;

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

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

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

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

79 (13) "Lender", any person who either lends money for or invests money in residential
80 mortgage loans;

81 (14) "Licensee" or "residential mortgage licensee", **an individual or** a person who is
82 licensed to engage in the activities regulated by sections 443.800 to 443.893;

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

86 (16) "Loan brokerage agreement", a written agreement in which a broker agrees to do
87 either of the following:

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

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

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

95 (18) "Making a residential mortgage loan" or "funding a residential mortgage loan", for
96 compensation or gain, either, directly or indirectly, advancing funds or making a commitment
97 to an applicant for a residential mortgage loan;

98 (19) "Mortgage banker", a mortgage loan company which is subject to licensing,
99 supervision, or annual audit requirements by the Federal National Mortgage Association
100 (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States
101 Veterans Administration (VA), or the United States Department of Housing and Urban
102 Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved
103 lender, loan correspondent, seller, or servicer;

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

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

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

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

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

- 118 (25) "Person", any individual, firm, partnership, corporation, company or association and
119 the legal successors thereof;
- 120 (26) "Personal residence address", a street address, but shall not include a post office box
121 number;
- 122 (27) "Purchasing", the purchase of conventional or government-insured mortgage loans
123 secured by residential real estate from either the lender or from the secondary market;
- 124 (28) "Residential mortgage board", the residential mortgage board created in section
125 443.816;
- 126 (29) "Residential mortgage financing transaction", the negotiation, acquisition, sale or
127 arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential mortgage loan
128 or residential mortgage loan commitment;
- 129 (30) "Residential mortgage loan commitment", a written conditional agreement to
130 finance a residential mortgage loan;
- 131 (31) "Residential real property" or "residential real estate", real property located in this
132 state improved by a one-family to four-family dwelling;
- 133 (32) "Servicing", the collection or remittance for, or the right or obligation to collect or
134 remit for, any lender, noteowner, noteholder or for a licensee's own account, of payments,
135 interests, principal and trust items such as hazard insurance and taxes on a residential mortgage
136 loan and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any
137 notifications to the borrower that are necessary to enable the borrower to keep the loan current
138 and in good standing;
- 139 (33) "Soliciting, processing, placing or negotiating a residential mortgage loan", for
140 compensation or gain, either, directly or indirectly, accepting or offering to accept an application
141 for a residential mortgage loan, assisting or offering to assist in the processing of an application
142 for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate
143 the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower
144 including, but not limited to, the submission of credit packages for the approval of lenders, the
145 preparation of residential mortgage loan closing documents, and including a closing in the name
146 of a broker;
- 147 (34) "Ultimate equitable owner", a person who, directly or indirectly, owns or controls
148 an ownership interest in a corporation, foreign corporation, alien business organization, trust or
149 any other form of business organization regardless of whether the person owns or controls the
150 ownership interest through one or more persons or one or more proxies, powers of attorney,
151 nominees, corporations, associations, partnerships, trusts, joint stock companies or other entities
152 or devices, or any combination thereof.

153 2. The director may define by rule any terms used in sections 443.800 to 443.893 for
154 efficient and clear administration.

 443.805. 1. No **individual or** person shall engage in the business of brokering, funding,
2 originating, servicing or purchasing of residential mortgage loans without first obtaining a
3 license from the director, pursuant to sections 443.800 to 443.893 and the regulations
4 promulgated thereunder. The licensing provisions of sections 443.805 to 443.812 shall not apply
5 to any entity engaged solely in commercial mortgage lending or to any person exempt as
6 provided in section 443.803 or pursuant to regulations promulgated as provided in sections
7 443.800 to 443.893.

8 2. No person except a licensee or exempt entity shall do any business under any name
9 or title or circulate or use any advertising or make any representation or give any information to
10 any person which indicates or reasonably implies activity within the scope of the provisions of
11 sections 443.800 to 443.893.

 443.810. Effective [May 21, 1998] **August 28, 2008**, any person who violates any
2 provision of sections 443.805 to 443.812 shall be deemed guilty of a class C felony **and shall**
3 **be liable for damages caused to a borrower as determined by a court of law in a suit**
4 **brought by the borrower so damaged.**

 443.812. 1. [Only one] A license shall be issued to each **individual and** person
2 conducting activities regulated by sections 443.800 to 443.893. A licensee shall register with
3 the director each office, place of business or location where the licensee conducts any part of the
4 licensee's business pursuant to section 443.839.

5 2. Licensees may only solicit, broker, fund, originate, serve and purchase residential
6 mortgage loans in conformance with sections 443.800 to 443.893 and such rules as may be
7 promulgated by the director thereunder.

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