

SECOND REGULAR SESSION

HOUSE BILL NO. 2586

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DONNELLY (Sponsor), CURLS, NASHEED, MEINERS, VILLA, LeVOTA, STORCH, PAGE, WITTE, SWINGER, DARROUGH, HUGHES, YAEGER, HARRIS (110), LAMPE, KUESSNER, BURNETT, LOW (39), TALBOY, ZIMMERMAN, FALLERT, SPRENG, ZWEIFEL AND SCHOEMEHL (Co-sponsors).

Read 1st time April 1, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5626L.01I

AN ACT

To repeal sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.821, 443.825, 443.830, 443.833, 443.841, 443.847, 443.849, 443.865, and 443.881, RSMo, and to enact in lieu thereof seventeen 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, 443.809, 443.810, 443.812, 443.821, 443.825, 2 443.830, 443.833, 443.841, 443.847, 443.849, 443.865, and 443.881, RSMo, are repealed and 3 seventeen new sections enacted in lieu thereof, to be known as sections 443.803, 443.805, 4 443.810, 443.821, 443.830, 443.833, 443.834, 443.841, 443.846, 443.847, 443.849, 443.850, 5 443.852, 443.854, 443.865, 443.878, and 443.881, to read as follows:

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

2 (1) **"Act as a mortgage broker", to act, for compensation or gain, or in the**

3 **expectation of compensation or gain, either directly or indirectly, by accepting or offering**

4 **to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage**

5 **loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan**

6 **commitments or interest rate guarantee agreements to borrowers, or engaging in**

7 **tablefunding of mortgage loans, whether such acts are done through contact by telephone,**

8 **by electronic means, by mail, or in person with the borrowers or potential borrowers;**

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.

9 **(2) "Act as a mortgage lender", to engage in the business of making mortgage loans**
10 **for compensation or gain;**

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

13 **[(2)] (4) "Affiliate":**

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

17 (b) Any entity:

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

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

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

25 **[(3)] (5) "Annual audit"**, a certified audit of the licensee's books and records and systems
26 of internal control performed by a certified public accountant in accordance with generally
27 accepted accounting principles and generally accepted auditing standards;

28 **[(4)] (6) "Board"**, the residential mortgage board, created in section 443.816;

29 **[(5)] (7) "Borrower"**, the person or persons who use the services of a loan broker,
30 originator or lender;

31 **(8) "Branch manager"**, the individual whose principal office is physically located
32 in, who is in charge of, and who is responsible for the business operations of a branch office
33 of a mortgage broker;

34 **(9) "Branch office"**, an office of the licensee acting as a mortgage broker that is
35 separate and distinct from the licensee's principal office;

36 **(10) "Control"**, the power to vote more than twenty percent of outstanding voting
37 shares or other interests of a corporation, partnership, limited liability company,
38 association, or trust;

39 **[(6)] (11) "Director"**, the director of the division of finance within the department of
40 economic development;

41 **(12) "Employee"**, an individual who has an employment relationship acknowledged
42 by the individual and the mortgage broker and is treated as an employee for purposes of
43 compliance with the federal income tax laws;

44 [(7)] **(13)** "Escrow agent", a third party, individual or entity, charged with the fiduciary
45 obligation for holding escrow funds on a residential mortgage loan pending final payout of those
46 funds in accordance with the terms of the residential mortgage loan;

47 [(8)] **(14)** "Exempt entity", the following entities:

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

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

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

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

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

60 (f) Any first-tier subsidiary of a national or state bank that has its principal place of
61 business in this state, provided that such first-tier subsidiary is regularly examined by the
62 division of finance or the Comptroller of the Currency or a consumer compliance examination
63 of it is regularly conducted by the Federal Reserve;

64 (g) Any person engaged solely in the business of securing loans on the secondary market
65 provided such person does not make decisions about the extension of credit to the borrower;

66 (h) Any mortgage banker as defined in subdivision (19) of this subsection; or

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

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

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

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

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

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

86 [(10)] (15) "First-tier subsidiary", as defined by administrative rule promulgated by the
87 director;

88 [(11)] (16) "Full-service office", office and staff in Missouri reasonably adequate to
89 handle efficiently communications, questions and other matters relating to any application for
90 a new, or existing, home mortgage loan which the licensee is brokering, funding, originating,
91 purchasing or servicing. The management and operation of each full-service office must include
92 observance of good business practices such as adequate, organized and accurate books and
93 records, ample phone lines, hours of business, staff training and supervision and provision for
94 a mechanism to resolve consumer inquiries, complaints and problems. The director shall
95 promulgate regulations with regard to the requirements of this subdivision and shall include an
96 evaluation of compliance with this subdivision in the periodic examination of the licensee;

97 [(12)] (17) "Government-insured mortgage loan", any mortgage loan made on the
98 security of residential real estate insured by the Department of Housing and Urban Development
99 or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;

100 [(13)] (18) "Lender", any person who either lends money for or invests money in
101 residential mortgage loans;

102 [(14)] (19) "Licensee" or "residential mortgage licensee", a person, **loan officer, or**
103 **mortgage broker** who is licensed to engage in the activities regulated by sections 443.800 to
104 443.893;

105 [(15)] (20) "Loan broker" or "broker", a person exempted from licensing pursuant to
106 subdivision (8) of this subsection, who performs the activities described in subdivisions (17) and
107 (32) of this subsection;

108 [(16)] (21) "Loan brokerage agreement", a written agreement in which a broker agrees
109 to do either of the following:

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

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

113 [(17)] (22) "Loan brokering", "mortgage brokering", or "mortgage brokerage service",
114 the act of helping to obtain for an investor or from an investor for a borrower, a loan secured by

115 residential real estate situated in Missouri or assisting an investor or a borrower in obtaining a
116 loan secured by residential real estate in return for consideration;

117 **(23) "Loan officer", an individual who, in exchange for compensation as an**
118 **employee of another person, accepts or offers to accept applications for mortgage loans.**
119 **This subdivision shall not include any exempt entity defined in this section;**

120 [(18)] **(24) "Making a residential mortgage loan" or "funding a residential mortgage**
121 **loan", for compensation or gain, either, directly or indirectly, advancing funds or making a**
122 **commitment to an applicant for a residential mortgage loan;**

123 **(25) "Managing principal", a person who agrees to be primarily responsible for the**
124 **operations of a licensed mortgage broker;**

125 [(19)] **(26) "Mortgage banker", a mortgage loan company which is subject to licensing,**
126 **supervision, or annual audit requirements by the Federal National Mortgage Association**
127 **(FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States**
128 **Veterans Administration (VA), or the United States Department of Housing and Urban**
129 **Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved**
130 **lender, loan correspondent, seller, or servicer;**

131 **(27) "Mortgage broker", a person who acts as a mortgage broker as that term is**
132 **defined in this section;**

133 [(20)] **(28) "Mortgage loan" or "residential mortgage loan", a loan to, or for the benefit**
134 **of, any natural person made primarily for personal, family or household use, including a reverse**
135 **mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real**
136 **property or certificates of stock or other evidence of ownership interests in, and proprietary**
137 **leases from, corporations or partnerships formed for the purpose of cooperative ownership of**
138 **residential real property;**

139 [(21)] **(29) "Net worth", as provided in section 443.859;**

140 [(22)] **(30) "Originating", the advertising, soliciting, taking applications, processing,**
141 **closing, or issuing of commitments for, and funding of, residential mortgage loans;**

142 [(23)] **(31) "Party to a residential mortgage financing transaction", a borrower, lender or**
143 **loan broker in a residential mortgage financing transaction;**

144 [(24)] **(32) "Payments", payment of all, or any part of, the following: principal, interest**
145 **and escrow reserves for taxes, insurance and other related reserves and reimbursement for lender**
146 **advances;**

147 [(25)] **(33) "Person", any individual, firm, partnership, corporation, company or**
148 **association and the legal successors thereof;**

149 [(26)] **(34) "Personal residence address", a street address, but shall not include a post**
150 **office box number;**

151 [(27)] **(35)** "Purchasing", the purchase of conventional or government-insured mortgage
152 loans secured by residential real estate from either the lender or from the secondary market;

153 **(36)** "Qualified lender", a person who is engaged as a mortgage lender and is either
154 a supervised or a nonsupervised institution, as these terms are defined in 24 CFR 202.2, as
155 approved by the United States Department of Housing and Urban Development;

156 **(37)** "Qualified person", a person who is employed as a loan officer by a qualified
157 lender or by a mortgage broker registered with the director or who is a general partner,
158 manager, or officer of a qualified lender or registered mortgage broker;

159 [(28)] **(38)** "Residential mortgage board", the residential mortgage board created in
160 section 443.816;

161 [(29)] **(39)** "Residential mortgage financing transaction", the negotiation, acquisition,
162 sale or arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential
163 mortgage loan or residential mortgage loan commitment;

164 [(30)] **(40)** "Residential mortgage loan commitment", a written conditional agreement
165 to finance a residential mortgage loan;

166 [(31)] **(41)** "Residential real property" or "residential real estate", real property located
167 in this state improved by a one-family to four-family dwelling;

168 [(32)] **(42)** "Servicing", the collection or remittance for, or the right or obligation to
169 collect or remit for, any lender, noteowner, noteholder or for a licensee's own account, of
170 payments, interests, principal and trust items such as hazard insurance and taxes on a residential
171 mortgage loan and includes loan payment follow-up, delinquency loan follow-up, loan analysis
172 and any notifications to the borrower that are necessary to enable the borrower to keep the loan
173 current and in good standing;

174 [(33)] **(43)** "Soliciting, processing, placing or negotiating a residential mortgage loan",
175 for compensation or gain, either, directly or indirectly, accepting or offering to accept an
176 application for a residential mortgage loan, assisting or offering to assist in the processing of an
177 application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to
178 negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a
179 borrower including, but not limited to, the submission of credit packages for the approval of
180 lenders, the preparation of residential mortgage loan closing documents, and including a closing
181 in the name of a broker;

182 **(44)** "Tablefunding", a transaction where a licensee closes a loan in its own name
183 with funds provided by others, and the loan is assigned simultaneously to the mortgage
184 lender providing the funding within one business day of the funding of the loan;

185 [(34)] **(45)** "Ultimate equitable owner", a person who, directly or indirectly, owns or
186 controls an ownership interest in a corporation, foreign corporation, alien business organization,

187 trust or any other form of business organization regardless of whether the person owns or
188 controls the ownership interest through one or more persons or one or more proxies, powers of
189 attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or
190 other entities or devices, or any combination thereof.

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

443.805. 1. [No person shall engage in the business of brokering, funding, originating,
2 servicing or purchasing of residential mortgage loans without first obtaining a license from the
3 director, pursuant to sections 443.800 to 443.893 and the regulations promulgated thereunder.
4 The licensing provisions of sections 443.805 to 443.812 shall not apply to any entity engaged
5 solely in commercial mortgage lending or to any person exempt as provided in section 443.803
6 or pursuant to regulations promulgated as provided in sections 443.800 to 443.893.] **Other than
7 an exempt entity, it is unlawful for any person in this state to act as a mortgage broker, or
8 directly or indirectly to engage in the business of a mortgage broker, without first
9 obtaining a license from the director under the provisions of this chapter.**

10 2. [No person except a licensee or exempt entity shall do any business under any name
11 or title or circulate or use any advertising or make any representation or give any information to
12 any person which indicates or reasonably implies activity within the scope of the provisions of
13 sections 443.800 to 443.893.] **It is unlawful for any natural person to engage in the
14 solicitation and acceptance of applications for mortgage loans without first obtaining a
15 license as a loan officer or mortgage broker issued by the director under the provisions of
16 this chapter. It is unlawful for any person to employ, to compensate, or to appoint as its
17 agent a loan officer unless the loan officer is licensed as a loan officer under this chapter.
18 Exempt entities shall not be subject to this subsection.**

19 3. **The license of a loan officer is not effective during any period when that person
20 is not employed by a mortgage broker licensed under this chapter. When a loan officer
21 ceases to be employed by a mortgage broker licensed under this chapter, the loan officer
22 and the mortgage broker licensed under this chapter by whom that person is employed
23 shall promptly notify the director in writing. A loan officer shall not be employed
24 simultaneously by more than one mortgage broker licensed under this chapter.**

25 4. **Each mortgage broker licensed under this chapter shall maintain on file with the
26 director a list of all loan officers who are employed with the mortgage broker.**

27 5. **No person, other than an exempt entity, shall hold himself or herself out as a
28 mortgage broker or loan officer unless such person is licensed in accordance with this
29 chapter.**

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] **D** felony. **Each**
3 **transaction involving the unlawful making or brokering of a mortgage loan is a separate**
4 **offense.**

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

2 (1) The filing of an application;

3 (2) The filing with the director of a listing of judgments entered against, and bankruptcy
4 petitions by, the applicant for the preceding seven years;

5 (3) The payment of investigation and application fees to be established by administrative
6 rule; and

7 (4) An investigation of the averments required by section 443.827, which investigation
8 must allow the director to issue positive findings stating that the financial responsibility,
9 experience, character and general fitness of the applicant, and of the members thereof, if the
10 applicant is a partnership or association, and of the officers and directors thereof if the applicant
11 is a corporation, are such as to command the confidence of the community and to warrant belief
12 that the business will be operated honestly, fairly and efficiently within the scope of sections
13 443.800 to 443.893. If the director does not find the applicant's business and personal conduct
14 warrants the issuance of a license, the director shall notify the applicant of the denial with the
15 reasons stated for such denial. An applicant may appeal such denial to the board.] **1. Any**
16 **person, other than an exempt entity, desiring to obtain a license as a loan officer or**
17 **mortgage broker shall make written application for licensure to the director on forms**
18 **prescribed by the director. In accordance with rules adopted by the director, the**
19 **application shall contain any information the director deems necessary regarding the**
20 **following:**

21 (1) **The applicant's name and address and Social Security number;**

22 (2) **The applicant's form and place of organization, if applicable;**

23 (3) **The applicant's proposed method of and locations for doing business, if**
24 **applicable;**

25 (4) **The qualifications and business history of the applicant and, if applicable, the**
26 **business history of any partner, officer, or director, any person occupying a similar status**
27 **or performing similar functions, or any person directly or indirectly controlling the**
28 **applicant, including:**

29 (a) **A description of any injunction or administrative order by any state or federal**
30 **authority to which the person is or has been subject;**

31 (b) **A conviction of a misdemeanor involving fraudulent dealings or moral**
32 **turpitude or relating to any aspect of the residential mortgage lending business;**

33 (c) Any felony convictions;

34 (5) With respect to an application for licensing as a mortgage broker, the
35 applicant's financial condition, credit history, and business history; and with respect to the
36 application for licensing as a loan officer, the applicant's credit history and business
37 history.

38 2. In addition to the requirements imposed by the director under subsection 1 of
39 this section, each individual applicant for licensure as a loan officer shall:

40 (1) Be at least eighteen years of age;

41 (2) Have satisfactorily completed, within the three years immediately preceding the
42 date application is made, a mortgage lending fundamentals course approved by the
43 director. The course shall consist of at least eight hours of classroom instruction in
44 subjects related to mortgage lending approved by the director. In addition, the applicant
45 shall have satisfactorily completed a written examination approved by the director or
46 possess residential mortgage lending education or experience in residential mortgage
47 lending transactions that the director deems equivalent to the course.

48 3. In addition to the requirements under subsection 1 of this section, each applicant
49 for licensure as a mortgage broker at the time of application and at all times thereafter
50 shall comply with the following requirements:

51 (1) If the applicant is a sole proprietor, the applicant shall have at least three years
52 of experience in residential mortgage lending or other experience or competency
53 requirements as the director may impose;

54 (2) If the applicant is a general or limited partnership, at least one of its general
55 partners shall have the experience as described under subdivision (1) of this subsection;

56 (3) If the applicant is a corporation, at least one of its principal officers shall have
57 the experience as described under subdivision (1) of this subsection;

58 (4) If the applicant is a limited liability company, at least one of its managers shall
59 have the experience as described under subdivision (1) of this subsection.

60 4. Each applicant shall identify one person meeting the requirements of subsection
61 3 of this section to serve as the applicant's managing principal.

62 5. Every applicant for initial licensure shall pay a filing fee of one thousand dollars
63 for licensure as a mortgage broker or fifty dollars for licensure as a loan officer.

64 6. Any general partner, manager of a limited liability company, or officer of a
65 corporation who individually meets the requirements under subsection 7 of this section
66 shall, upon payment of the applicable fee, meet the qualifications for licensure as a loan
67 officer subject to the provisions of subsection 8 of this section.

68 **7. Each principal office and each branch office of a mortgage broker licensed under**
69 **the provisions of this chapter shall be issued a separate license. A licensed mortgage**
70 **broker shall file with the director an application on a form prescribed by the director that**
71 **identifies the address of the principal office and each branch office and branch manager.**
72 **A filing fee of one hundred dollars shall be assessed by the director for each office issued**
73 **a license.**

74 **8. If the director determines that an applicant meets the qualifications for licensure**
75 **and finds that the financial responsibility, character, and general fitness of the applicant**
76 **are such as to command the confidence of the community and to warrant belief that the**
77 **business will be operated honestly and fairly, the director shall issue a license to the**
78 **applicant.**

443.830. The director shall refuse to license or renew a license if:

2 (1) It is determined that the applicant is not in compliance with any provision of sections
3 443.800 to 443.893; **or**

4 (2) There is substantial continuity between the applicant and any violator of any
5 provision of sections 443.800 to 443.893[; or

6 (3) The director cannot make the findings specified in section 443.821].

443.833. 1. [Licenses shall be renewed on the first anniversary of the date of issuance
2 and every two years thereafter. Renewal application forms and fees shall be submitted to the
3 director at least sixty days before the renewal date.] **All licenses issued by the director under**
4 **the provisions of this chapter shall expire annually on the thirtieth day of June following**
5 **issuance or on any other date that the director may determine. The license shall become**
6 **invalid after the date unless renewed. A license may be renewed forty-five days prior to**
7 **the expiration date by paying to the director a renewal fee as follows:**

8 **(1) Licensed mortgage brokers shall pay an annual fee of five hundred dollars and**
9 **one hundred dollars for each branch office;**

10 **(2) Licensed loan officers shall pay an annual fee of fifty dollars.**

11 2. [The director shall send notice at least ninety days before the licensee's renewal date,
12 but failure to send or receive such notice is no defense for failure to timely renew, except when
13 an extension for good cause is granted by the director. If the director does not grant an extension
14 and the licensee fails to submit a completed renewal application form and the proper fees in a
15 timely manner, the director may assess additional fees as follows:

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

19 (2) Such fee shall be assessed without prior notice to the licensee, but shall be assessed
20 only in cases where the director possesses documentation of the licensee's continuing activity for
21 which the unexpired license was issued.] **If a license is not renewed prior to the applicable**
22 **expiration date, then an additional two hundred fifty dollars in addition to the renewal fee**
23 **under subsection 1 of this section shall be assessed as a late fee to any renewal. In the event**
24 **a licensee fails to obtain a reinstatement of the license within ninety days after the date the**
25 **license expires, the director may require the licensee to comply with the requirements for**
26 **the initial issuance of a license under the provisions of this chapter.**

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

32 4. A license which is not renewed within one year of becoming inactive shall expire.]
33 **Licenses issued under this chapter are not assignable. Control of a licensee shall not be**
34 **acquired through a stock purchase or other device without the prior written consent of the**
35 **director.**

443.834. 1. As a condition of license renewal, the director may adopt rules to
2 **require continuing education of licensees under this chapter for the purpose of enhancing**
3 **the professional competence and professional responsibility of mortgage brokers and loan**
4 **officers. The rules may include criteria for:**

- 5 (1) The content of continuing education courses;
- 6 (2) Accreditation of continuing education sponsors and programs;
- 7 (3) Accreditation of videotape or other audiovisual programs;
- 8 (4) Computation of credit;
- 9 (5) Special cases and exemptions;
- 10 (6) General compliance procedures;
- 11 (7) Sanctions for noncompliance.

12 **2. Annual continuing professional education requirements shall be determined by**
13 **the director. However, the requirements shall not exceed eight credit hours within a**
14 **one-year period.**

443.841. 1. Each mortgage broker licensee shall maintain and transact business
2 **from a principal place of business in this state. A principal place of business in this state**
3 **shall consist of at least one enclosed room or building of stationary construction in which**
4 **negotiations of mortgage loan transactions of others may be conducted and carried on in**
5 **privacy and in which all of the books, records, and files pertaining to mortgage loan**

6 transactions relating to borrowers in this state are maintained. However, the director may,
7 by rule, impose terms and conditions under which the records and files may be maintained
8 outside of this state.

9 **2. A mortgage banker licensee shall report any change of address of the principal**
10 **place of business or any branch office within fifteen days after the change.**

11 **3.** The license shall be conspicuously displayed in every Missouri office. The license
12 shall state the full name and address of the licensee. The license shall not be transferable or
13 assignable. A separate certificate shall be issued for display in each Missouri office.

443.846. The board may review any rule, regulation, or order of the director
2 **adopted under or with respect to the provisions of this chapter, and any person aggrieved**
3 **by any rule, regulation, or order may appeal to the board for review upon giving notice**
4 **within twenty days after the rule, regulation, or order that is subject to the complaint is**
5 **adopted or issued.**

 443.847. **1.** No rule or portion of a rule promulgated under the authority of sections
2 443.800 to 443.893 shall become effective unless it has been promulgated pursuant to the
3 provisions of section 536.024, RSMo.

4 **2. The board may adopt any rule it deems necessary to carry out the provisions of**
5 **sections 443.800 to 443.893, to provide the protection of the borrowing public and to**
6 **instruct mortgage lenders and brokers in interpreting this chapter.**

 443.849. A corporate surety bond in the principal sum of [twenty] **fifty** thousand dollars
2 shall accompany each application for a license. The bond shall be in a form satisfactory to the
3 director and shall be issued by a bonding company or insurance company authorized to do
4 business in this state, to secure the faithful performance of the obligations of the applicant and
5 the agents and subagents of the applicant in connection with the activities of originating,
6 servicing or acquiring mortgage loans. An applicant or licensee may, in lieu of filing the bond
7 required pursuant to this section, provide the director with a [twenty] **fifty** thousand dollar
8 irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial
9 institution. **An audited financial statement from a qualified lender showing a net worth of**
10 **two hundred fifty thousand dollars or more shall be accepted in lieu of any bond required.**

443.850. Each mortgage broker licensed under this chapter shall have a managing
2 **principal who operates the business under that person's full charge control and**
3 **supervision. The managing principal for a licensee's business may also serve as the branch**
4 **manager of one of the licensee's branch offices. Each mortgage broker licensed under this**
5 **chapter shall file a form as prescribed by the director indicating the business's designation**
6 **of managing principal and branch manager for each branch and each individual's**
7 **acceptance of the responsibility. Each mortgage broker licensed under this chapter shall**

8 notify the director of any change in its managing principal or branch manager designated
9 for each branch. Any licensee who does not comply with this provision shall have the
10 licensee's license suspended until the licensee complies with this section. Any individual
11 licensee who operates as a sole proprietorship shall be considered a managing principal for
12 the purposes of this chapter.

443.852. A mortgage broker, including any mortgage broker licensee and any
2 person required to be licensed as a mortgage broker under this chapter, shall, in addition
3 to duties imposed by other statutes:

- 4 (1) Safeguard and account for any money handled for the borrower;
- 5 (2) Follow reasonable and lawful instructions from the borrower;
- 6 (3) Act with reasonable skill, care and diligence; and
- 7 (4) Make reasonable efforts, with lenders with whom the broker regularly does
8 business to secure a loan that is reasonably advantageous to the borrower considering all
9 the circumstances, including the rates, charges, and repayment terms of the loan and the
10 loan options for which the borrower qualifies with such lenders.

443.854. In addition to the activities prohibited under other provisions of this
2 chapter, it shall be unlawful for any person in the course of any mortgage loan transaction:

- 3 (1) To misrepresent or conceal the material facts or make false promises likely to
4 influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a
5 mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;
- 6 (2) To refuse improperly to issue a satisfaction of a mortgage;
- 7 (3) To fail to account for or to deliver to any person any funds, documents, or other
8 thing of value obtained in connection with a mortgage loan, including money provided by
9 a borrower by a real estate appraisal or a credit report, which the mortgage broker or loan
10 officer is not entitled to retain under the circumstances;
- 11 (4) To pay, receive, or collect in whole or in part any commission, fee, or other
12 compensation for brokering a mortgage loan in violation of this chapter, including a
13 mortgage loan brokered by any unlicensed person other than an exempt entity;
- 14 (5) To advertise mortgage loans, including rates, margins, discounts, points, fees,
15 commissions, or other material information, including material limitations on the loans,
16 unless the person is able to make the mortgage loans available to a reasonable number of
17 qualified applicants;
- 18 (6) To fail to disburse funds in accordance with a written commitment or
19 agreement to make a mortgage loan;

20 (7) To engage in any transaction, practice, or course of business that is not in good
21 faith or fair dealing or that constitutes a fraud upon any person, in connection with the
22 brokering or making of, or purchase or sale of, any mortgage loan;

23 (8) To fail promptly to pay when due reasonable fees to a licensed appraiser for
24 appraisal services that are:

25 (a) Requested from the appraiser in writing by the mortgage broker or an employee
26 of the mortgage broker; and

27 (b) Performed by the appraiser in connection with the origination or closing of a
28 mortgage loan for a customer or the mortgage broker;

29 (9) To broker a mortgage loan which contains a prepayment penalty if the principal
30 amount of the loan is one hundred fifty thousand dollars or less.

 443.865. 1. The director shall keep a list of all applicants for licensure under this
2 chapter that includes the date of application, name, and place of residence, and whether
3 the license was granted or refused.

4 2. The director shall keep a current roster showing the names and places of
5 business of all licensees that shows their respective loan officers and a roster of exempt
6 entities required to file a notice. The rosters shall be kept on file in the office of the
7 director containing information regarding all orders or other actions taken against the
8 licensees, loan officers, and other persons, and be open to public inspection.

9 3. Every licensee shall make and keep the accounts, correspondence, memoranda,
10 papers, books, and other records as prescribed in rules adopted by the director. All
11 records shall be preserved for three years unless the director, by rule, prescribes otherwise
12 for particular types of records. The recordkeeping requirements imposed by the director
13 or this subsection shall not be greater than those imposed by applicable federal law.

14 4. If the information contained in any document filed with the director is or
15 becomes inaccurate or incomplete in any material respect, the licensee shall promptly file
16 a correcting amendment to the information contained in the document.

17 5. A licensee shall maintain in a segregated escrow fund or trust account any funds
18 which come into the licensee's possession, but which are not the licensee's property and
19 which the licensee is not entitled to retain under the circumstances. The escrow fund or
20 trust account shall be held on deposit in a federally insured financial institution.

21 6. The director may promulgate rules with respect to placement in escrow accounts by
22 any licensee of any money, funds, deposits, checks or drafts entrusted to the licensee by any
23 person dealing with the licensee as a residential mortgage licensee.

 443.878. 1. All exempt entities who are engaged in the mortgage brokerage
2 business on August 28, 2008, shall be required to file a form with the director on or before

3 such date. All exempt entities, who commence mortgage brokerage business in this state
4 after August 28, 2008, shall file the form with the director upon commencement of the
5 business. This form prescribed by the director shall contain all the following information:

- 6 (1) The name of the respective exempt entity;
- 7 (2) The basis of the exempt status of the exempt entity;
- 8 (3) The principal business address of the exempt entity;
- 9 (4) The state or federal regulatory authority responsible for the exempt entity's
10 supervision, examination, or regulation, if any.

11 2. In addition to any other measures the exempt entity may be subject to under this
12 chapter, failure of an exempt entity to file the required form shall not affect the exempt
13 status of the person. However, the exempt entity shall be subject to a civil penalty set by
14 the director that shall not exceed the sum of two hundred fifty dollars for each year the
15 form is not filed. No person required to file under this section may transact business in this
16 state as a mortgage broker unless the person has filed the prescribed form with the director
17 in accordance with this section.

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

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

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

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

14 2. No license shall be suspended or revoked, except as provided in this section, nor shall
15 any licensee be subject to any other disciplinary proceeding without notice of the licensee's right
16 to a hearing as provided in sections 443.800 to 443.893.

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

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

21 5. No revocation, suspension or surrender of any license shall impair or affect the
22 obligation of any preexisting lawful contract between the licensee and any person.

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

29 7. Whenever the director revokes or suspends a license issued pursuant to sections
30 443.800 to 443.893, the director shall execute in duplicate a written order to that effect. The
31 director shall publish notice of such order in a newspaper of general circulation in the county in
32 which the residential mortgage licensee's business is located and shall serve a copy of such order
33 upon the licensee. Such order may be reviewed by the board.

34 8. When the director finds any person in violation of the grounds provided in subsection
35 9 of this section, the director may enter an order imposing one or more of the following
36 disciplinary actions:

37 (1) Revocation of the license;

38 (2) Suspension of the license subject to reinstatement upon satisfying all reasonable
39 conditions the director may specify;

40 (3) Placement of the licensee on probation for a period of time and subject to any
41 reasonable conditions as the director may specify;

42 (4) Issuance of a reprimand; and

43 (5) Denial of a license.

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

46 (1) [Being convicted or found guilty, regardless of pendency of an appeal, of a crime in
47 any jurisdiction which involves fraud, dishonest dealings, or any other act involving moral
48 turpitude] **Being convicted of any felony, or, within the past ten years, has been convicted**
49 **of any misdemeanor involving mortgage lending or any aspect of the mortgage lending**
50 **business, or any offense involving breach of trust, moral turpitude, or fraudulent or**
51 **dishonest dealing;**

52 (2) Fraud, misrepresentation, deceit or negligence in any mortgage financing transaction;

53 (3) A material or intentional misstatement of fact on an initial or renewal application;

54 (4) Failure to follow the director's rules with respect to placement of funds in escrow
55 accounts;

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

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

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

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

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

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

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

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

77 (13) Failure to pay timely any fee or charge due under the provisions of sections 443.800
78 to 443.893. **However, the director may enter only a denial order under this subdivision,**
79 **and the director shall vacate the order when the deficiency has been corrected;**

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

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

86 (16) A pattern of substantially underestimating closing costs;

87 (17) Failure to comply with, or any violation of, any provision of sections 443.800 to
88 443.893;

89 **(18) Being permanently or temporarily enjoined by any court of competent**
90 **jurisdiction from engaging in or continuing any conduct or practice involving any aspect**
91 **of the mortgage lending business;**

92 **(19) Is the subject of an order of the director denying, suspending, or revoking that**
93 **person's license as a mortgage broker;**

94 **(20) Is the subject of an order entered within the last five years by the authority of**
95 **any state with jurisdiction over that state's mortgage brokerage denying or revoking that**
96 **person's license as a mortgage broker industry or denying or revoking that person's**
97 **mortgage broker;**

98 **(21) Has been the executive officer or controlling shareholder or owned a**
99 **controlling interest in any mortgage broker who has been subject to an order or injunction**
100 **described in subdivision (18), (19), or (20) of this subsection;**

101 **(22) That the order is of public interest.**

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

105 11. [Such licensee shall be subject to suspension or revocation for employee actions only
106 if there is a pattern of repeated violations by an employee or employees or the licensee has
107 knowledge of the violation.] **The director may by order, summarily postpone or suspend the**
108 **license of a licensee pending final determination of any proceeding under this section.**
109 **Upon entering the order the director shall promptly notify the applicant or licensee that**
110 **the order has been entered and the reasons for the order. The director shall calendar a**
111 **hearing within fifteen days after the director receives a written request for a hearing. If**
112 **a licensee does not request a hearing and the director does not request a hearing, the order**
113 **shall remain in effect until it is modified or vacated by the director. If a hearing is**
114 **requested or ordered by the director after notice of an opportunity for hearing, the**
115 **director may modify or vacate the order or extend it until final determination.**

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

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

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

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

128 (2) Any licensee may surrender a license by delivering to the director written notice that
129 the licensee thereby surrenders such license, but surrender shall not affect the licensee's civil or
130 criminal liability for acts committed prior to surrender or entitle the licensee to a return of any
131 part of the license fee.] **The director may, by order impose a civil penalty upon a licensee or**
132 **any partner, officer, director, or other person occupying a similar status or performing**
133 **similar functions on behalf of a licensee for any violation of this chapter. The civil penalty**
134 **shall not exceed ten thousand dollars for each violation of this chapter by a mortgage**
135 **broker. The director may impose a civil penalty of up to ten thousand dollars for each**
136 **violation of this chapter by a person other than a licensee or exempt entity.**

137 **13. In addition to other powers under this chapter, upon finding that any action of**
138 **a person is in violation of this chapter, the director may order the person to cease from the**
139 **prohibited action. If the person subject to the order fails to appeal the order of the**
140 **director, or if the person appeals and the appeal is denied or dismissed, and the person**
141 **continues to engage in the prohibited action in violation of the director's order, the person**
142 **shall be subject to a civil penalty of up to twenty-five thousand dollars for each violation**
143 **of the director's order. The penalty shall be in addition to and not in lieu of any other**
144 **provision of law applicable to a licensee for the licensee's failure to comply with an order**
145 **of the director.**

146 **14. When a licensee is accused of any act, omission, or misconduct that would**
147 **subject the licensee to disciplinary action, the licensee, with the consent and approval of**
148 **the director, may surrender the license and all the rights and privileges pertaining to it for**
149 **a period of time established for or submit any application for licensure under this chapter.**

150 **15. If the director has reasonable grounds to believe that a licensee or other person**
151 **has violated the provisions of this chapter or that facts exist that would be the basis for an**
152 **order against a licensee or other person, the director may at any time, either personally or**
153 **by a person duly designated by the director, investigate or examine the loans and business**
154 **of the licensee and examine the books, accounts, records, and files of any licensee or other**
155 **person relating to the complaint or matter under investigation. The reasonable cost of this**
156 **investigation or examination shall be charged against the licensee.**

157 **16. The director may from time to time at the expense of the director's office**
158 **conduct routine examinations of the books and records of any licensee in order to**
159 **determine the compliance with this chapter and any rules adopted.**

160 **17. If the director finds that the managing principal, branch manager, or loan**
161 **officer of a licensee had knowledge of or reasonably should have knowledge of, or**
162 **participated in, any activity that results in the entry of an order under this section**
163 **suspending or withdrawing the license of a licensee, the director may prohibit the**

164 **managing broker or loan officer from serving as a managing broker or loan officer for any**
165 **period of time the director deems necessary.**

2 [443.809. When the director has reasonable cause to believe that any
3 person has not submitted an application for licensure and is conducting any of the
4 activities described in subsection 1 of section 443.805, the director may examine
5 all books and records of the person and any additional documentation necessary
6 to determine whether such person is required to be licensed pursuant to sections
7 443.800 to 443.893.]

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

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

2 [443.825. 1. Application for a license shall be made as provided in
3 sections 443.833 and 443.835. The application shall be in writing, made under
4 oath, and on a form provided by the director.

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

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

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

17 (3) Information as to the character, fitness, financial and business
18 responsibility, background, experience and criminal records of any:

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

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

25 (c) Person, entity or ultimate equitable owner that controls, directly or
26 indirectly, the election of twenty-five percent or more of the members of the
board of directors of the applicant; and

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

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