

FIRST REGULAR SESSION

HOUSE BILL NO. 714

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CURLS.

1302L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1639, 443.803, 443.809, 443.816, 443.821, 443.825, 443.827, 443.833, 443.837, 443.849, 443.851, 443.853, 443.855, 443.857, 443.859, 443.869, 443.881, 443.885, and 443.891, RSMo, and to enact in lieu thereof twenty-nine new sections relating to mortgages, with penalty provisions.

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

Section A. Sections 67.1639, 443.803, 443.809, 443.816, 443.821, 443.825, 443.827, 443.833, 443.837, 443.849, 443.851, 443.853, 443.855, 443.857, 443.859, 443.869, 443.881, 443.885, and 443.891, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 67.1639, 443.803, 443.809, 443.816, 443.821, 443.825, 443.827, 443.833, 443.837, 443.849, 443.851, 443.853, 443.855, 443.857, 443.858, 443.859, 443.860, 443.869, 443.870, 443.880, 443.881, 443.884, 443.885, 443.886, 443.888, 443.890, 443.891, 443.892, and 443.915, to read as follows:

67.1639. 1. Each governing commission and program created pursuant to 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 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 body of the municipality or county 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

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.

11 rate approved by the voters at the election authorizing the merger, whichever rate is lower. The
12 commissioners shall cause the amount to be raised by taxation in each year to be certified to the
13 county clerk or, in a city not within a county, to the taxing authority of such city in the manner
14 provided by law, and any tax so levied and certified shall be collected and enforced in the same
15 manner and by the same officers as those taxes for the purposes of the county and city within
16 which the area of the commission is located. Any such tax, when collected, shall be paid over
17 to the proper officer of the commission who is authorized to receive such tax. The governing
18 commission may issue tax anticipation warrants against the taxes to be assessed for the calendar
19 year in which the program is created and for the first full calendar year after the creation of the
20 program.

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

30 4. **Except as provided in subsection 8 of this section,** the guarantee fund, including
31 principal, interest, fees and all other sources of income, shall be used solely and exclusively for
32 the purpose of providing guarantees to members of the particular guaranteed home equity
33 program and for reasonable salaries, expenses, bills, and fees incurred in administering the
34 program, and shall be used for no other purpose. Any municipality with a population of less than
35 one thousand shall administer the program in conjunction with another such program in the same
36 county, if another such program exists in such county.

37 5. The guarantee fund shall be maintained, invested, and expended exclusively by the
38 governing commission of the program for whose purposes it was created. Under no
39 circumstance shall the guarantee fund be used by any person or persons, governmental body, or
40 public or private agency or concern other than the governing commission of the program for
41 whose purposes it was created. Under no circumstances shall the guarantee fund be commingled
42 with other funds or investments. No commissioner or family member of a commissioner, or
43 employee or family member of an employee, may receive any financial benefit, either directly
44 or indirectly, from the guarantee fund. Nothing in this subsection shall be construed to prohibit
45 payment of expenses to a commissioner pursuant to sections 67.1603 and 67.1609 or payment
46 of salaries or expenses to an employee pursuant to this section. As used in this subsection,

47 "family member" means a spouse, child, stepchild, parent, brother, or sister of a commissioner
48 or a child, stepchild, parent, brother, or sister of a commissioner's spouse.

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

53 7. Each political subdivision enacting a property tax pursuant to this section shall
54 periodically calculate the amount of moneys necessary to pay the liabilities that may occur as a
55 result of members seeking payments and shall adjust the tax rate within the limits allowed in this
56 section to meet the liabilities. If the political subdivision determines that the fund contains or
57 is likely to contain sufficient moneys, then the tax rate shall be reduced or eliminated until such
58 calculations demonstrate that additional tax revenues are needed to fulfill commitments to
59 members in the program.

60 8. A governing commission, with no less than four million dollars in its guarantee
61 fund, may, if authorized by referendum duly adopted by a majority of the voters, establish
62 a foreclosure prevention loan fund to provide low interest emergency loans to eligible
63 applicants that may be forced into foreclosure proceedings. Whenever the question of
64 creating a foreclosure prevention loan fund is initiated by resolution or ordinance of the
65 corporate authorities of the municipality or by a petition signed by not less than five
66 percent of the total number of registered voters of each precinct in the territory, the
67 registered voters of which are eligible to sign the petition, it shall be the duty of the election
68 authority having jurisdiction over the municipality to submit the question of creating the
69 program to the electors of each precinct within the territory at the regular election
70 specified in the resolution, ordinance, or petition initiating the question. A petition
71 initiating a question described in this subsection shall be filed with the election authority
72 having jurisdiction over the municipality. The petition shall be filed and objections to the
73 petition shall be made in the manner provided in the general election law. A resolution,
74 ordinance, or petition initiating a question described in this subsection shall specify the
75 election at which the question is to be submitted. The referendum on the question shall be
76 held in accordance with the general election law. The question shall be in substantially the
77 following form:

78

79 "Shall the (name of the home equity program) implement a Foreclosure Prevention Loan
80 Fund with money from the guarantee fund of the established guaranteed home equity
81 program?"

82 The votes must be recorded as "Yes" or "No".

83

84 Whenever a majority of the voters on the public question approve the creation of a
85 foreclosure prevention loan fund as certified by the proper election authorities, the
86 commission shall establish the program and administer the program with funds collected
87 under the guaranteed fund under this section, subject to the following conditions:

88 (1) At any given time, the cumulative total of all loans and loan guarantees, if
89 applicable, issued under this program shall not exceed three million dollars;

90 (2) Only eligible applicants may apply for a loan. The commission may establish,
91 by resolution, additional criteria for eligibility;

92 (3) The loan shall be used to assist with preventing foreclosure proceedings;

93 (4) An eligible applicant shall not borrow more than the amount of equity value in
94 his or her residence;

95 (5) A commission shall ensure that loans issued are secured as a second lien on the
96 property;

97 (6) A commission shall charge an interest rate which it determines to be below the
98 market rate of interest generally available to the applicant;

99 (7) A commission may, by resolution, establish other administrative rules and
100 procedures as are necessary to implement this program including, but not limited to,
101 eligibility requirements for eligible applicants, loan dollar amounts, and loan terms;

102 (8) A commission may also impose on loan applicants a one-time application fee for
103 the purpose of defraying the costs of administering the program.

104 9. The guarantee fund shall be maintained, invested, and expended exclusively by
105 the governing commission of the program for whose purposes it was created. Under no
106 circumstances shall the guarantee fund be used by any person or persons, governmental
107 body, or public or private agency or concern other than the governing commission of the
108 program for whose purposes it was created. Under no circumstances shall the guarantee
109 fund be commingled with other funds or investments.

110 10. No commissioner or family member of a commissioner, or employee or family
111 member of an employee, may receive any financial benefit, either directly or indirectly,
112 from the guarantee fund. Nothing in this subsection shall be construed to prohibit
113 payment of expenses to a commissioner in accordance with section 67.1603 or payment of
114 salaries or expenses to an employee in accordance with this section. As used in this
115 subsection, "family member" means a spouse, child, stepchild, parent, brother, or sister
116 of a commissioner or a child, stepchild, parent, brother, or sister of a commissioner's
117 spouse.

118 **11. An independent audit of the guarantee fund and the management of the**
119 **program shall be conducted annually and made available to the public through any office**
120 **of the governing commission or a public facility such as a local public library located**
121 **within the territory of the program.**

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] **enter into a residential mortgage**
4 **loan agreement or residential mortgage loan brokerage agreement relative to a mortgage**
5 secured by residential real estate;

6 (2) "Affiliate":

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

10 (b) Any entity:

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

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

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

18 (3) "Annual audit", a certified audit of the licensee's books and records and systems of
19 internal control performed by a certified public accountant in accordance with generally accepted
20 accounting principles and generally accepted auditing standards;

21 (4) "Board", the residential mortgage board, created in section 443.816;

22 (5) "Borrower", the person or persons who use the services of a loan broker, originator
23 or lender;

24 (6) "**Confidential supervisory information**", **any report of examination, visitation,**
25 **or investigation prepared by the director under sections 443.800 to 443.893, any report of**
26 **examination, visitation, or investigation prepared by the state regulatory authority of**
27 **another state that examines a licensee, any document or record prepared or obtained in**
28 **connection with or relating to any examination, visitation, or investigation, and any record**
29 **prepared or obtained by the director to the extent that the record summarizes or contains**
30 **information derived from any report, document, or record described in this subsection.**
31 **"Confidential supervisory information" does not include any information or record**
32 **routinely prepared by a licensee and maintained in the ordinary course of business or any**

33 **information or record that is required to be made publicly available under state or federal**
34 **law or rule;**

35 **(7) "Delinquency rate factor", the factor set by rule of the director that is**
36 **multiplied by the average gross delinquency rate of licensees, determined annually for the**
37 **immediately preceding calendar year, for the purpose of determining which licensees shall**
38 **be examined by the director under sections 443.800 to 443.893;**

39 **(8) "Director", the director of the division of finance;**

40 **[(7)] (9) "Escrow agent", a third party, individual or entity, charged with the fiduciary**
41 **obligation for holding escrow funds on a residential mortgage loan pending final payout of those**
42 **funds in accordance with the terms of the residential mortgage loan;**

43 **[(8)] (10) "Exempt entity", the following entities:**

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

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

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

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

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

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

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

62 **(h) Any mortgage banker as defined in subdivision [(19)] (23) of this subsection; [or]**

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

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

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

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

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

79 [(9)] (11) "Financial institution", a savings and loan association, savings bank, credit
80 union, mortgage banker or bank organized under the laws of Missouri or the laws of the United
81 States with its principal place of business in Missouri;

82 [(10)] (12) "First-tier subsidiary", as defined by administrative rule promulgated by the
83 director;

84 [(11)] (13) "Full-service office", office and staff in Missouri reasonably adequate to
85 handle efficiently communications, questions and other matters relating to any application for
86 a new, or existing, home mortgage loan which the licensee is brokering, funding, originating,
87 purchasing or servicing. The management and operation of each full-service office must include
88 observance of good business practices such as adequate, organized and accurate books and
89 records, ample phone lines, hours of business, staff training and supervision and provision for
90 a mechanism to resolve consumer inquiries, complaints and problems. The director shall
91 promulgate regulations with regard to the requirements of this subdivision and shall include an
92 evaluation of compliance with this subdivision in the periodic examination of the licensee;

93 [(12)] (14) "Government-insured mortgage loan", any mortgage loan made on the
94 security of residential real estate insured by the Department of Housing and Urban Development
95 or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;

96 (15) "Gross delinquency rate", the quotient determined by dividing the sum of the
97 number of government-insured residential mortgage loans funded or purchased by a
98 licensee in the preceding calendar year that are delinquent and the number of conventional
99 residential mortgage loans funded or purchased by the licensee in the preceding calendar
100 year that are delinquent by the sum of the number of government-insured residential
101 mortgage loans funded or purchased by the licensee in the preceding calendar year and the
102 number of conventional residential mortgage loans funded or purchased by the licensee in
103 the preceding calendar year;

104 [(13)] (16) "Lender", any person who either lends money for or invests money in
105 residential mortgage loans;

106 [(14)] (17) "Licensee" or "residential mortgage licensee", a person who is licensed to
107 engage in the activities regulated by sections 443.800 to 443.893;

108 [(15)] (18) "Loan broker" or "broker", a person exempted from licensing pursuant to
109 subdivision [(8)] (10) of this subsection, who performs the activities described in subdivisions
110 [(17)] (20) and [(32)] (36) of this subsection;

111 [(16)] (19) "Loan brokerage agreement", a written agreement in which a broker agrees
112 to do either of the following:

113 (a) Obtain a residential mortgage loan for the borrower or assist the borrower in
114 obtaining a residential mortgage loan; or

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

116 [(17)] (20) "Loan brokering", "mortgage brokering", or "mortgage brokerage service",
117 the act of helping to obtain for an investor or from an investor for a borrower, a loan secured by
118 residential real estate situated in Missouri or assisting an investor or a borrower in obtaining a
119 loan secured by residential real estate in return for consideration **to be paid by either the**
120 **borrower or the lender including, but not limited to, contracting for the delivery of**
121 **residential mortgage loans to a third party lender and soliciting, processing, placing, or**
122 **negotiating residential mortgage loans;**

123 (21) "Loan originator", any natural person who, for compensation or in the
124 expectation of compensation, either directly or indirectly makes, offers to make, solicits,
125 places, or negotiates a residential mortgage loan;

126 [(18)] (22) "Making a residential mortgage loan" or "funding a residential mortgage
127 loan", for compensation or gain, either, directly or indirectly, advancing funds or making a
128 commitment to an applicant for a residential mortgage loan;

129 [(19)] (23) "Mortgage banker", a mortgage loan company which is subject to licensing,
130 supervision, or annual audit requirements by the Federal National Mortgage Association
131 (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States
132 Veterans Administration (VA), or the United States Department of Housing and Urban
133 Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved
134 lender, loan correspondent, seller, or servicer;

135 [(20)] (24) "Mortgage loan" or "residential mortgage loan", a loan to, or for the benefit
136 of, any natural person made primarily for personal, family or household use, including a reverse
137 mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real
138 property or certificates of stock or other evidence of ownership interests in, and proprietary

139 leases from, corporations or partnerships formed for the purpose of cooperative ownership of
140 residential real property;

141 [(21)] (25) "Net worth", as provided in section 443.859;

142 [(22)] (26) "Originating", the advertising, soliciting, taking applications, processing,
143 closing, or issuing of commitments for, and funding of, residential mortgage loans;

144 [(23)] (27) "Party to a residential mortgage financing transaction", a borrower, lender or
145 loan broker in a residential mortgage financing transaction;

146 [(24)] (28) "Payments", payment of all, or any part of, the following: principal, interest
147 and escrow reserves for taxes, insurance and other related reserves and reimbursement for lender
148 advances;

149 [(25)] (29) "Person", any individual, firm, partnership, corporation, company or
150 association and the legal successors thereof;

151 [(26)] (30) "Personal residence address", a street address, but shall not include a post
152 office box number;

153 [(27)] (31) "Purchasing", the purchase of conventional or government-insured mortgage
154 loans secured by residential real estate from either the lender or from the secondary market;

155 [(28)] (32) "Residential mortgage board", the residential mortgage board created in
156 section 443.816;

157 [(29)] (33) "Residential mortgage financing transaction", the negotiation, acquisition,
158 sale or arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential
159 mortgage loan or residential mortgage loan commitment;

160 [(30)] (34) "Residential mortgage loan commitment", a written conditional agreement
161 to finance a residential mortgage loan;

162 [(31)] (35) "Residential real property" or "residential real estate", real property located
163 in this state improved by a one-family to four-family dwelling **used or occupied, wholly or**
164 **partly, as the home or residence of one or more persons and may refer, subject to**
165 **regulations of the director, to unimproved real property upon which those kinds of**
166 **dwelling are to be constructed;**

167 [(32)] (36) "Servicing", the collection or remittance for, or the right or obligation to
168 collect or remit for, any lender, noteowner, noteholder or for a licensee's own account, of
169 payments, interests, principal and trust items such as hazard insurance and taxes on a residential
170 mortgage loan and includes loan payment follow-up, delinquency loan follow-up, loan analysis
171 and any notifications to the borrower that are necessary to enable the borrower to keep the loan
172 current and in good standing;

173 [(33)] (37) "Soliciting, processing, placing or negotiating a residential mortgage loan",
174 for compensation or gain, either, directly or indirectly, accepting or offering to accept an

175 application for a residential mortgage loan, assisting or offering to assist in the processing of an
176 application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to
177 negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a
178 borrower including, but not limited to, the submission of credit packages for the approval of
179 lenders, the preparation of residential mortgage loan closing documents, and including a closing
180 in the name of a broker;

181 [(34)] (38) "Ultimate equitable owner", a person who, directly or indirectly, owns or
182 controls an ownership interest in a corporation, foreign corporation, alien business organization,
183 trust or any other form of business organization regardless of whether the person owns or
184 controls the ownership interest through one or more persons or one or more proxies, powers of
185 attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or
186 other entities or devices, or any combination thereof.

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

443.809. 1. The director shall have the authority, at any time and as often as reasonably
2 necessary, to investigate or examine the books and records of any licensed person to assure
3 compliance with sections 443.800 to 443.893. The director shall have the right to examine under
4 oath all persons whose testimony may be required relative to the business of any person being
5 examined or investigated under sections 443.800 to 443.893. The director shall have free and
6 immediate access to any licensed person's places of business and to all books and records related
7 to the licensed business.

8 2. **The director may issue orders against any person if the director has reasonable**
9 **cause to believe that an unsafe, unsound, or unlawful practice has occurred, is occurring,**
10 **or is about to occur, if any person has violated, is violating, or is about to violate any law,**
11 **rule, or written agreement with the director, or for the purposes of administering the**
12 **provisions of sections 443.800 to 443.893 and any rule adopted in accordance with sections**
13 **443.800 to 443.893.**

443.816. There is hereby created in the division of finance a "Residential Mortgage
2 Board" which shall have such powers and duties as are now or hereafter conferred upon it by
3 law. The board shall consist of five members who shall be appointed by the governor. The
4 members of the board shall be residents of this state, and one of the members shall be a member
5 of the Missouri Bar in good standing. Three members of the board shall be experienced in
6 mortgage brokering and the remaining members of the board shall have no financial interest in
7 any mortgage brokering business. Not more than three members of the board shall be members
8 of the same political party. The term of office of each member shall be three years, except for
9 those first appointed. Two shall be appointed for terms of two years and one shall be appointed

10 for a term of one year. Members shall serve until their successors are duly appointed and have
11 qualified. Each member shall serve for the remainder of the term for which the member was
12 appointed. The board shall select one of the members as chairman and one of the members as
13 secretary. Vacancies on the board shall be filled for the unexpired term in the same manner as
14 in the case of an original appointment. The members of the board shall receive as compensation
15 the sum of one hundred dollars per day while discharging their duties, and they shall be
16 reimbursed for their actual and necessary expenses incurred in the performance of their duties.
17 A majority of the members of the board shall constitute a quorum and the decision of a majority
18 of a quorum shall be the decision of the board. The board shall meet upon call of the chairman,
19 or of the director, or of any two members of the board, and may meet at any place in this state.
20 The board shall:

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

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

25 **(3) Submit recommendations to the director for efficient administration of sections**
26 **443.800 to 443.893; and**

27 **(4) Perform other duties as are prescribed by the director.**

443.821. 1. 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] **ten** years;

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

7 **(4) Except for a broker applying to renew a license, the filing of an audited balance**
8 **sheet including all footnotes prepared by a certified public accountant in accordance with**
9 **generally accepted accounting principles and generally accepted auditing principles which**
10 **evidences that the applicant meets the net worth requirements of section 443.859;**

11 **(5) The filing of proof satisfactory to the director that the applicant, the members**
12 **thereof if the applicant is a partnership or association, the members or managers thereof**
13 **that retain any authority or responsibility under the operating agreement if the applicant**
14 **is a limited liability company, or the officers thereof if the applicant is a corporation have**
15 **three years experience preceding application in real estate finance. In lieu of this**
16 **requirement, the applicant and the applicant's officers or members, as applicable, may**
17 **satisfactorily complete a program of education in real estate finance and fair lending, as**
18 **approved by the director, prior to receiving the initial license. The director shall**

19 **promulgate rules regarding proof of experience requirements and educational**
20 **requirements and the satisfactory completion of those requirements. The director may**
21 **establish by rule a list of duly licensed professionals and others who may be exempt from**
22 **this requirement; and**

23 **(6)** An investigation of the averments required by section 443.827, which investigation
24 must allow the director to issue positive findings stating that the financial responsibility,
25 experience, character and general fitness of the applicant, and of the members thereof, if the
26 applicant is a partnership or association, and of the officers and directors thereof if the applicant
27 is a corporation, are such as to command the confidence of the community and to warrant belief
28 that the business will be operated honestly, fairly and efficiently within the scope of sections
29 443.800 to 443.893. If the director does not find the applicant's business and personal conduct
30 warrants the issuance of a license, the director shall notify the applicant of the denial with the
31 reasons stated for such denial. An applicant may appeal such denial to the board.

32 **2. The director may impose conditions on a license if the director determines that**
33 **the conditions are necessary or appropriate. These conditions shall be imposed in writing**
34 **and shall continue in effect for the period prescribed by the director.**

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

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

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

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

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

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

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

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

24 (d) Person, entity or ultimate equitable owner that the director finds influences
25 management of the applicant.

26 **3. Upon written request by the licensee and notwithstanding the provisions of**
27 **subsection 2 of this section, the director may permit the licensee to omit all or part of the**
28 **information required by such subsections if, in lieu of the omitted information, the licensee**
29 **submits an affidavit stating that the information submitted on the licensee's previous**
30 **renewal application is still true and accurate. The director may promulgate rules**
31 **prescribing the form and content of the affidavit that are necessary to accomplish the**
32 **purposes of this section.**

443.827. 1. Each application **or renewal** shall be accompanied by an averment that the
2 applicant:

3 (1) Will maintain at least one full-service office within the state of Missouri as provided
4 in section 443.857;

5 (2) Will maintain staff reasonably adequate to meet the requirements of section 443.857;

6 (3) Will keep and maintain for thirty-six months the same written records as required by
7 the federal Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., and any other information
8 required by rules of the director;

9 (4) Will timely file any report required pursuant to sections 443.800 to 443.893;

10 (5) Will not engage, whether as principal or agent, in the practice of rejecting residential
11 mortgage applications or varying terms or application procedures without reasonable cause, on
12 real estate within any specific geographic area from the terms or procedures generally provided
13 by the licensee within other geographic areas of the state;

14 (6) Will not engage in fraudulent home mortgage underwriting practices;

15 (7) Will not make payments, whether directly or indirectly, of any kind to any in-house
16 or fee appraiser of any government or private money lending agency with which an application
17 for a home mortgage has been filed for the purpose of influencing the independent judgment of
18 the appraiser with respect to the value of any real estate which is to be covered by such home
19 mortgage;

20 (8) Has filed tax returns, both state and federal, for the past three years or filed with the
21 director a personal, an accountant's or attorney's statement as to why no return was filed;

22 (9) Will not engage in any activities prohibited by section 443.863;

23 (10) **Will not knowingly make any false promises likely to influence or persuade,**
24 **or pursue a course of misrepresentation and false promises through agents, solicitors,**
25 **advertising or otherwise;**

26 (11) Will not knowingly misrepresent, circumvent or conceal any material particulars
27 regarding a transaction to which the applicant is a party;

28 [(11)] (12) Will disburse funds in accordance with the applicant's agreements through
29 a licensed and bonded disbursing agent or licensed real estate broker;

30 [(12)] (13) Has not committed any crime against the laws of this state, or any other state
31 or of the United States, involving moral turpitude, fraudulent or dishonest dealings and that no
32 final judgment has been entered against the applicant in a civil action upon grounds of fraud,
33 misrepresentation or deceit which has not been previously reported to the director;

34 [(13)] (14) Will account for and deliver to any person any personal property, including,
35 but not limited to, money, funds, deposits, checks, drafts, mortgages or any other thing of value,
36 which has come into the applicant's possession and which is not the applicant's property or which
37 the applicant is not in law or equity entitled to retain under the circumstances, at the time which
38 has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of
39 the person entitled to such accounting and delivery;

40 [(14)] (15) Has not engaged in any conduct which would be cause for denial of a license;

41 [(15)] (16) Has not become insolvent;

42 [(16)] (17) Has not submitted an application which contains a material misstatement;

43 [(17)] (18) Has not demonstrated negligence or incompetence in the performance of any
44 activity required to hold a license under sections 443.800 to 443.893;

45 [(18)] (19) Will advise the director in writing of any changes to the information
46 submitted on the most recent application for license within forty-five days of such change. The
47 written notice must be signed in the same form as the application for the license being amended;

48 [(19)] (20) Will comply with the provisions of sections 443.800 to 443.893, or with any
49 lawful order or rule made thereunder;

50 [(20)] (21) When probable cause exists, will submit to periodic examinations by the
51 director as required by sections 443.800 to 443.893; [and]

52 [(21)] (22) Will advise the director in writing of any judgments entered against, and
53 bankruptcy petitions by, the license applicant within five days of the occurrence of the judgment
54 or petition;

55 (23) **Will advise the director in writing within thirty days when the license**
56 **applicant requests a licensee under sections 443.800 to 443.893 to repurchase a loan, and**
57 **the circumstances therefor; and**

58 (24) Will advise the director in writing within thirty days when the license
59 applicant is requested by another entity to repurchase a loan, and the circumstances
60 therefor.

61 2. A licensee who fails to fulfill obligations of an averment, to comply with
62 averments made, or otherwise violates any of the averments made under this section shall
63 be subject to the penalties in section 443.881.

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.

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

9 (1) A fee of [five] **seven** hundred **fifty** dollars shall be assessed the licensee thirty days
10 after the proper renewal date, and one thousand **five hundred** dollars each month thereafter, until
11 the license is either renewed or expires pursuant to subsections 3 and 4 of this section;

12 (2) Such fee shall be assessed without prior notice to the licensee, but shall be assessed
13 only in cases where the director possesses documentation of the licensee's continuing activity for
14 which the unrenewed license was issued.

15 3. A license which is not renewed by the date required in this section shall automatically
16 become inactive. No activity regulated by sections 443.800 to 443.893 shall be conducted by
17 the licensee when a license becomes inactive. **The director may require the licensee to**
18 **provide a plan for the disposition of any residential mortgage loans not closed or funded**
19 **when the license becomes inactive. The director may allow a licensee with an inactive**
20 **license to conduct activities regulated by sections 443.800 to 443.893 for the sole purpose**
21 **of assisting borrowers in the closing or funding of loans for which the loan application was**
22 **taken from a borrower while the license was active.** An inactive license may be reactivated
23 by filing a completed reactivation application with the director, payment of the renewal fee, and
24 payment of a reactivation fee equal to the renewal fee.

25 4. A license which is not renewed within one year of becoming inactive shall expire.

443.837. 1. The director may waive the licensing fee upon receipt of:

2 (1) An application for a residential mortgage license in Missouri;

3 (2) An addendum requesting waiver of the fee stating the grounds in support of such
4 waiver, including, but not limited to, not-for-profit status, or the showing of undue hardship; and

5 (3) In the case of out-of-state servicer of loans in Missouri, the following documentation
6 shall be required;

7 (a) A verification that the firm services only [twenty-five] **one hundred** or fewer loans
8 secured by residential real estate situated in Missouri[; except that, any out-of-state servicer
9 located in the metropolitan area of the city of St. Louis and any city with at least three hundred
10 fifty thousand inhabitants which is located in more than one county may service more than
11 twenty-five loans provided that such servicer meets all the requirements for licensing provided
12 for businesses located in Missouri, except the provision for a full-service office located in
13 Missouri];

14 (b) An agreement not to originate, purchase or acquire additional servicing of loans
15 secured by residential real estate situated in Missouri;

16 (c) An agreement to maintain a dedicated toll-free telephone number for the exclusive
17 use by the licensee's Missouri customers;

18 (d) An agreement to provide a written notice, at least annually, to the licensee's Missouri
19 customers advising them of the dedicated toll-free telephone number and to furnish the director
20 with a copy of such written notice.

21 2. In order for a licensee to be granted a waiver pursuant to subsection 1 of this section,
22 a request for a waiver of the filing fee shall be submitted each year along with any other required
23 license renewal procedures.

443.849. [A corporate surety bond in the principal sum of twenty thousand dollars shall
2 accompany each application for a license. The bond shall be in a form satisfactory to the director
3 and shall be issued by a bonding company or insurance company authorized to do business in
4 this state, to secure the faithful performance of the obligations of the applicant and the agents and
5 subagents of the applicant in connection with the activities of originating, servicing or acquiring
6 mortgage loans. An applicant or licensee may, in lieu of filing the bond required pursuant to this
7 section, provide the director with a twenty thousand dollar irrevocable letter of credit, as defined
8 in section 400.5-103, RSMo, issued by any financial institution.] **1. Every licensee, with respect**
9 **to any person appointed or elected to any position requiring the receipt of payment,**
10 **management, or use of money belonging to a residential mortgage licensee engaged in the**
11 **activities of originating, servicing, or purchasing mortgage loans or whose duties permit**
12 **him or her to have access to or custody of any of its money or securities or custody of any**
13 **money or securities belonging to third parties or whose duties permit him or her regularly**
14 **to make entries in the books or other records of a licensee, shall, before assuming his or her**
15 **duties, maintain a fidelity bond in the amount of one hundred thousand dollars by some**
16 **fidelity insurance company licensed to do business in this state.**

17 **2. Each bond shall be for any loss the licensee may sustain in money or other**
18 **property through the commission of any dishonest or criminal act or omission by any**
19 **person required to be bonded, whether committed alone or in concert with another. The**
20 **bond shall be in the form and amount approved by the director who may at any time**
21 **require one or more additional bonds. A true copy of every bond, including all riders and**
22 **endorsements executed subsequent to the effective date of the bond, shall be filed at all**
23 **times with the director. Each bond shall provide that a cancellation thereof shall not**
24 **become effective unless and until thirty days' notice in writing first shall have been given**
25 **to the director unless he or she shall have approved the cancellation earlier. If the director**
26 **believes the licensee's business is being conducted in an unsafe manner due to the lack of**
27 **bonds or the inadequacy of bonds, he or she may proceed against the licensee as provided**
28 **for in section 443.881.**

29 **3. All licensees shall maintain a bond in accordance with this subsection. Each**
30 **bond shall be for the recovery of expenses, fines, or fees due to or levied by the director in**
31 **accordance with sections 443.800 to 443.893. The bond shall be payable when the licensee**
32 **fails to comply with any provisions of sections 443.800 to 443.893 and shall be in the form**
33 **of a surety or licensure bond in the amount and form as prescribed by the director under**
34 **rules and regulations. The bond shall be payable to the director and shall be issued by**
35 **some insurance company authorized to do business in this state. A copy of the bond,**
36 **including any and all riders and endorsements executed subsequent to the effective date**
37 **of the bond, shall be placed on file with the director within ten days of the execution**
38 **thereof.**

39 **4. The director may promulgate rules with respect to bonding requirements for**
40 **residential mortgage licensees that are reasonable and necessary to accomplish the**
41 **purposes of sections 443.800 to 443.893.**

 443.851. 1. At the end of the licensee's fiscal year, but in no case more than twelve
2 months after the last audit conducted pursuant to this section and section 443.853, each licensee
3 shall cause the licensee's books and accounts to be audited by a certified public accountant not
4 connected with such licensee. The books and records of all licensees shall be maintained on an
5 accrual basis. The audit shall be sufficiently comprehensive in scope to permit the expression
6 of an opinion on the financial statements in the report and must be performed in accordance with
7 generally accepted accounting principles and generally accepted auditing standards.
8 **Notwithstanding the requirements of this subsection, a licensee that is a first-tier**
9 **subsidiary may submit audited consolidated financial statements of its parent as long as**
10 **the consolidated statements are supported by consolidating statements. The licensee's chief**

11 **financial officer shall attest to the licensee's financial statements disclosed in the**
12 **consolidating statements.**

13 2. As used in this section and section 443.853, the term "expression of opinion" includes
14 either:

- 15 (1) An unqualified opinion;
- 16 (2) A qualified opinion;
- 17 (3) A disclaimer of opinion; or
- 18 (4) An adverse opinion.

19 3. If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the
20 reasons therefor shall be fully explained. An opinion, qualified as to a scope limitation, shall not
21 be acceptable.

22 4. The audit report shall be filed with the director within [one hundred twenty] **ninety**
23 days of the audit date. The report filed with the director shall be certified by the certified public
24 accountant conducting the audit. The director may promulgate rules regarding late audit reports.

25 [5. As an alternative to the audit requirements of subsections 1 to 4 of this section, a
26 licensee may meet the requirements of this section without filing an audit report by posting and
27 maintaining a corporate surety bond, in addition to that described in section 443.849, in the
28 amount of one hundred thousand dollars. The bond shall be in form specified by and satisfactory
29 to the director and payable to the director and shall be issued by a bonding company or insurance
30 company authorized to do business in this state, to secure the faithful performance of the
31 obligations of the licensee, its agents and subagents in connection with the activities of
32 originating, servicing or acquiring mortgage loans. A licensee may, in lieu of this bond, provide
33 the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section
34 400.5-103, RSMo, issued by any financial institution.]

443.853. 1. If any licensee required to make an audit fails to cause an audit to be made,
2 the director shall cause the audit to be made by a certified public accountant at the licensee's
3 expense. The director shall select such certified public accountant by advertising for bids or by
4 such other fair and impartial means as the director establishes by regulation.

5 2. In lieu of an audit required by this section and section 443.851, the director may
6 accept any audit made in conformance with the audit requirements of the United States
7 Department of Housing and Urban Development.

8 **3. With respect to licensees who solely broker residential mortgage loans, in lieu of**
9 **the audit required by this section, the director may accept compilation financial statements**
10 **prepared at least every twelve months, and the compilation financial statement shall be**
11 **prepared by an independent certified public accountant licensed in Missouri or by an**
12 **equivalent state licensing law with full disclosure in accordance with generally accepted**

13 accounting principals and shall be submitted within ninety days after the end of the
14 licensee's fiscal year. If a licensee under this section fails to file a compilation as required,
15 the director shall cause an audit of the licensee's books and accounts to be made by a
16 certified public accountant at the licensee's expense. The director shall select the certified
17 public accountant by advertising for bids or by such other fair and impartial means as he
18 or she establishes by rule. A licensee who files false or misleading compilation financial
19 statements shall be fined not less than five thousand dollars.

20 **4.** The workpapers of the certified public accountants employed by each licensee for
21 purposes of conducting audits required by this section and section 443.851 are to be made
22 available to the director or the director's designee upon request and may be reproduced by the
23 director or the director's designee to enable the director to carry out the purposes of sections
24 443.800 to 443.893.

25 **5.** Notwithstanding any other provision of this section, if a licensee relying on
26 subsection 3 of this section causes its books to be audited at any other time or causes its
27 financial statements to be reviewed, a complete copy of the audited or reviewed financial
28 statements shall be delivered to the director at the time of the annual license renewal
29 payment following receipt by the licensee of the audited or reviewed financial statements.
30 All workpapers shall be made available to the director upon request. The financial
31 statements and workpapers may be reproduced by the director or the director's designee
32 to carry out the purposes of sections 443.800 to 443.893.

 443.855. In addition to such other rules the director may promulgate to effectuate
2 sections 443.800 to 443.893, the director shall prescribe rules governing the advertising of
3 mortgage loans, including, without limitation, the following requirements:

4 (1) Advertising for loans transacted pursuant to the requirements of sections 443.800 to
5 443.893 may not be false, misleading or deceptive. No person whose activities are regulated
6 pursuant to the provisions of sections 443.800 to 443.893 may advertise in any manner so as to
7 indicate or imply that the person's interest rates or charges for loans are in any way
8 recommended, approved, set or established by the state or by the provisions of sections 443.800
9 to 443.893. **The director may issue a cease and desist order for any violation of this**
10 **subdivision;**

11 (2) All advertisements by a licensee shall contain the name and an office address of such
12 entity, which shall conform to a name and address on record with the director;

13 (3) **No licensee shall advertise its services in Missouri in any media, whether print**
14 **or electronic, without the words "Missouri Residential Mortgage Licensee".**

 443.857. **1.** Each licensee shall maintain, in the state of Missouri, at least one
2 full-service office with staff reasonably adequate to efficiently handle all matters relating to any

3 proposed or existing home mortgage with respect to which such licensee is performing services,
4 regardless of kind, for any borrower or lender, note owner or holder, or for himself or
5 herself while engaged in the residential mortgage business. The location and operation of
6 a full-service office shall be in compliance with any applicable zoning laws or ordinances
7 and home office or business regulations.

8 **2. In lieu of maintaining a full-service office in this state, a licensee whose principal**
9 **place of business is located outside this state shall submit a certified audit as required in**
10 **sections 443.851 and 443.853 evidencing a minimum net worth of one hundred thousand**
11 **dollars, which shall be maintained at all times, and shall submit and maintain a fidelity**
12 **bond in the amount of one hundred thousand dollars.**

443.858. 1. A mortgage broker shall be considered to have created an agency
2 **relationship with the borrower in all cases and shall comply with the following duties:**

3 **(1) A mortgage broker shall act in the borrower's best interest and in good faith**
4 **toward the borrower. A mortgage broker shall not accept, give, or charge any undisclosed**
5 **compensation or realize any undisclosed remuneration, either through direct or indirect**
6 **means, that inures to the benefit of the mortgage broker on an expenditure made for the**
7 **borrower;**

8 **(2) Mortgage brokers shall carry out all lawful instructions given by borrowers;**

9 **(3) Mortgage brokers shall disclose to borrowers all material facts of which the**
10 **mortgage broker has knowledge which might reasonably affect the borrower's rights,**
11 **interests, or ability to receive the borrower's intended benefit from the residential**
12 **mortgage loan, but not facts which are reasonably susceptible to the knowledge of the**
13 **borrower;**

14 **(4) Mortgage brokers shall use reasonable care in performing duties; and**

15 **(5) Mortgage brokers shall account to a borrower for all the borrower's money and**
16 **property received as agent.**

17 **2. Nothing in this section prohibits a mortgage broker from contracting for or**
18 **collecting a fee for services rendered and which had been disclosed to the borrower in**
19 **advance of the provision of those services.**

20 **3. Nothing in this section requires a mortgage broker to obtain a loan containing**
21 **terms or conditions not available to the mortgage broker in the mortgage broker's usual**
22 **course of business, or to obtain a loan for the borrower from a mortgage lender with whom**
23 **the mortgage broker does not have a business relationship.**

443.859. Effective May 21, 1998, every licensee shall have and maintain a net worth of
2 **not less than [twenty-five] one hundred thousand dollars. Net worth shall be evidenced by**
3 **a balance sheet prepared by a certified public accountant in accordance with generally**

4 **accepted accounting principles and generally accepted auditing standards or by the**
5 **compilation financial statements authorized under subsection 3 of section 443.853.** The
6 director may promulgate rules with respect to net worth definitions and requirements for
7 licensees as necessary to accomplish the purposes of sections 443.800 to 443.893. In lieu of the
8 net worth requirement established by this section, the director may accept evidence of
9 conformance by the licensee with the net worth requirements of the United States Department
10 of Housing and Urban Development.

443.860. 1. No licensee may make, provide, or arrange for a residential mortgage
2 **loan without verifying the borrower's reasonable ability to pay the principal and interest**
3 **on the loan, real estate taxes, homeowner's insurance, assessments, and mortgage insurance**
4 **premiums, if applicable. For residential mortgage loans in which the interest rate may**
5 **vary, the reasonable ability to pay the principal and interest on the loan shall be**
6 **determined based on a fully indexed rate, which rate shall be calculated by using the index**
7 **rate prevailing at the time of origination of the loan plus the margin that will apply when**
8 **calculating the adjustable rate under the terms of the loan, assuming a fully amortizing**
9 **repayment schedule based on the term of the loan. For loans that allow for negative**
10 **amortization, the principal amount of the loan shall be calculated by including the**
11 **maximum amount the principal balance may increase due to negative amortization under**
12 **the terms of the loan.**

13 **2. For all residential mortgage loans made by a licensee, the borrower's income and**
14 **financial resources shall be verified by tax returns, payroll receipts, bank records, or other**
15 **reasonably reliable methods, based upon the circumstances of the proposed loan. Nothing**
16 **in this section shall be construed to limit a licensee's ability to rely on criteria other than**
17 **the borrower's income and financial resources to establish the borrower's reasonable**
18 **ability to repay a residential mortgage loan; however, such other criteria shall be verified**
19 **through reasonably reliable methods and documentation. A statement by the borrower to**
20 **the licensee of the borrower's income and resources is not sufficient to establish the**
21 **existence of the income or resources when verifying the reasonable ability to pay. Stated**
22 **income should be accepted only if there are mitigating factors that clearly minimize the**
23 **need for direct verification of ability to repay.**

443.869. 1. The functions, powers and duties of the director shall include the following:

- 2 (1) To issue or refuse to issue any license as provided in sections 443.800 to 443.893;
- 3 (2) To revoke or suspend for cause any license issued pursuant to sections 443.800 to
- 4 443.893;
- 5 (3) To keep records of all licenses issued pursuant to sections 443.800 to 443.893;

- 6 (4) To receive, consider, investigate and act upon complaints made by any person in
7 connection with any residential mortgage licensee in this state;
- 8 (5) To consider and act upon any recommendations from the residential mortgage board;
- 9 (6) To prescribe the forms of and receive:
- 10 (a) Applications for licenses; and
- 11 (b) All reports and all books and records required to be made by any residential mortgage
12 licensee pursuant to the provisions of sections 443.800 to 443.893, including annual audited
13 financial statements **and annual reports of mortgage activity**;
- 14 (7) To adopt rules necessary and proper for the administration of sections 443.800 to
15 443.893;
- 16 (8) To subpoena documents and witnesses and compel their attendance and production,
17 to administer oaths and to require the production of any books, papers or other material relevant
18 to any inquiry authorized by sections 443.800 to 443.893;
- 19 (9) To require information with regard to any applicant as the director may deem
20 desirable, with due regard to the paramount interests of the public, about the experience,
21 background, honesty, truthfulness, integrity and competency of the applicant concerning financial
22 transactions involving primary or subordinate mortgage financing and where the applicant is an
23 entity other than an individual, as to the honesty, truthfulness, integrity and competency of any
24 officer or director of the corporation, association or other entity or the members of a partnership;
- 25 (10) To examine the books and records of every licensee at intervals as provided by
26 sections 443.800 to 443.893 and the rules promulgated thereunder;
- 27 (11) To enforce the provisions of sections 443.800 to 443.893;
- 28 (12) To levy fees and charges for services performed in administering the provisions of
29 sections 443.800 to 443.893. The aggregate of all fees collected by the director shall be
30 deposited promptly after receipt and accompanied by a detailed statement of such receipts in the
31 residential mortgage licensing fund;
- 32 (13) To appoint a staff which may include an executive director, examiners, supervisors,
33 experts, special assistants and any necessary support staff as needed to effectively and efficiently
34 administer the provisions of sections 443.800 to 443.893; [and]
- 35 (14) To conduct hearings for [such purposes as the director deems appropriate] **the**
36 **purpose of:**
- 37 (a) **Appeals of orders of the director;**
- 38 (b) **Suspensions or revocations of licenses, or fining of licensees;**
- 39 (c) **Investigating:**
- 40 **a. Complaints against licensees; or**
- 41 **b. Annual gross delinquency rates; and**

42 (d) Carrying out the purposes of sections 443.800 to 443.893;

43 (15) To issue orders against any person, if the director has reasonable cause to
44 believe that an unsafe, unsound, or unlawful practice has occurred, is occurring, or is
45 about to occur, if any person has violated, is violating, or is about to violate any law, rule,
46 or written agreement with the director, or for the purpose of administering the provisions
47 of sections 443.800 to 443.893 and any rule adopted in accordance with sections 443.800 to
48 443.893;

49 (16) To address any inquiries to any licensee, or the officers thereof, in relation to
50 its activities and conditions, or any other matter connected with its affairs, and it shall be
51 the duty of any licensee or person so addressed, to promptly reply in writing to such
52 inquiries. The director may also require reports from any licensee at any time the director
53 may deem desirable;

54 (17) To exercise exclusive visitorial power over a licensee unless otherwise
55 authorized by sections 443.800 to 443.893 or as vested in the courts, or upon prior
56 consultation with the director, a foreign residential mortgage regulator with an
57 appropriate supervisory interest in the parent or affiliate of a licensee;

58 (18) To enter into cooperative agreements with state regulatory authorities of other
59 states to provide for examination of corporate offices or branches of those states and to
60 accept reports of such examinations;

61 (19) To assign an examiner or examiners to monitor the affairs of a licensee with
62 whatever frequency the director determines appropriate and to charge the licensee for
63 reasonable and necessary expenses of the director, if in the opinion of the director an
64 emergency exists or appears likely to occur; and

65 (20) To impose civil penalties of up to fifty dollars per day against a licensee for
66 failing to respond to a regulatory request or reporting requirement.

67 2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
68 is created under the authority delegated in this section shall become effective only if it complies
69 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
70 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
71 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
72 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the
73 grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be
74 invalid and void.

443.870. 1. The business affairs of a licensee under sections 443.800 to 443.893 shall
2 **be examined for compliance with sections 443.800 to 443.893 as often as the director deems**
3 **necessary and proper. The director shall promulgate rules with respect to the frequency**

4 and manner of examination. The director shall appoint a suitable person to perform such
5 examination. The director and his or her appointees may examine the entire books,
6 records, documents, and operations of each licensee and may examine any of the licensee's
7 officers, directors, employees, and agents under oath.

8 2. The director shall prepare a sufficiently detailed report of each licensee's
9 examination, shall issue a copy of such report to each licensee's principals, officers, or
10 directors and shall take appropriate steps to ensure correction of violations of sections
11 443.800 to 443.893.

12 3. Affiliates of a licensee shall be subject to examination by the director on the same
13 terms as the licensee, but only when reports from, or examination of a licensee provides for
14 documented evidence of unlawful activity between a licensee and affiliate benefiting,
15 affecting, or deriving from the activities regulated by sections 443.800 to 443.893.

16 4. The expenses of any examination of the licensee and affiliates shall be borne by
17 the licensee and assessed by the director as established by regulation.

18 5. Upon completion of the examination, the director shall issue a report to the
19 licensee. All confidential supervisory information, including the examination report and
20 the work papers of the report, shall belong to the director's office and may not be disclosed
21 to anyone other than the licensee, law enforcement officials, or other regulatory agencies
22 that have an appropriate regulatory interest as determined by the director, or to a party
23 presenting a lawful subpoena to the director. The director may immediately appeal to the
24 court of jurisdiction the disclosure of such confidential supervisory information and seek
25 a stay of the subpoena pending the outcome of the appeal. Reports required of licensees
26 by the director under sections 443.800 to 443.893 and results of examinations performed
27 by the director under sections 443.800 to 443.893 shall be the property of only the director,
28 but may be shared with the licensee. Access under sections 443.800 to 443.893 to the books
29 and records of each licensee shall be limited to the director and his or her agents as
30 provided in sections 443.800 to 443.893 and to the licensee and its authorized agents and
31 designees. No other person shall have access to the books and records of a licensee under
32 sections 443.800 to 443.893. Any person upon whom a demand for production of
33 confidential supervisory information is made, whether by subpoena, order, or other
34 judicial or administrative process, shall withhold production of the confidential
35 supervisory information and shall notify the director of the demand, at which time the
36 director is authorized to intervene for the purpose of enforcing the limitations of this
37 section or seeking the withdrawal or termination of the attempt to compel production of
38 the confidential supervisory information. The director may impose any conditions and
39 limitations on the disclosure of confidential supervisory information that are necessary to

40 protect the confidentiality of such information. Except as authorized by the director, no
41 person obtaining access to confidential supervisory information may make a copy of the
42 confidential supervisory information. The director may condition a decision to disclose
43 confidential supervisory information on entry of a protective order by the court or
44 administrative tribunal presiding in the particular case or on a written agreement of
45 confidentiality. In a case in which a protective order or agreement has already been
46 entered between parties other than the director, the director may nevertheless condition
47 approval for release of confidential supervisory information upon the inclusion of
48 additional or amended provisions in the protective order. The director may authorize a
49 party who obtained the records for use in one case to provide them to another party in
50 another case, subject to any conditions that the director may impose on either or both
51 parties. The requestor shall promptly notify other parties to a case of the release of
52 confidential supervisory information obtained and, upon entry of a protective order, shall
53 provide copies of confidential supervisory information to the other parties.

54 6. The director, shall be subject to the restrictions on:

55 (1) Owning shares of stock or holding any other equity interest in an entity
56 regulated under sections 443.800 to 443.893 or in any corporation or company that owns
57 or controls an entity regulated under sections 443.800 to 443.893;

58 (2) Being an officer, director, employee, or agent of a person regulated under
59 sections 443.800 to 443.893; and

60 (3) Obtaining a loan or accepting a gratuity from a person regulated under sections
61 443.800 to 443.893.

62 7. After the initial examination for those licensees whose only mortgage activity is
63 servicing fewer than one thousand Missouri residential loans, the examination required in
64 subsection 1 of this section may be waived upon submission of a letter from the licensee's
65 independent certified auditor that the licensee serviced fewer than one thousand Missouri
66 residential loans during the year in which the audit was performed.

443.880. 1. (1) No licensee may make, provide, or arrange a mortgage loan with
2 a prepayment penalty unless the licensee offers the borrower a loan without a prepayment
3 penalty, the offer is in writing, and the borrower initials the offer to indicate that the
4 borrower has declined the offer. In addition, the licensee shall disclose the discount in rate
5 received in consideration for a mortgage loan with the prepayment penalty.

6 (2) If a borrower declines an offer required under subdivision (1) of subsection 1
7 of this section, the licensee may include a prepayment penalty that extends no longer than
8 three years or the first change date or rate adjustment of a variable rate mortgage,

9 whichever comes earlier, provided that, if a prepayment is made during the fixed rate
10 period, the licensee shall receive an amount that is no more than:

11 (a) Three percent of the total loan amount if the prepayment is made within the
12 first twelve-month period following the date the loan was made;

13 (b) Two percent of the total loan amount if the prepayment is made within the
14 second twelve-month period following the date the loan was made; or

15 (c) One percent of the total loan amount if the prepayment is made within the third
16 twelve-month period following the date the loan was made, if the fixed rate period extends
17 three years.

18 (3) Notwithstanding any provision in this subsection, prepayment penalties are
19 prohibited in connection with the sale or destruction of a dwelling secured by a residential
20 mortgage loan.

21 (4) This subsection applies to loans made, refinanced, renewed, extended, or
22 modified on or after August 28, 2009.

23 2. (1) No licensee may fail to do either of the following:

24 (a) Provide timely notice to the borrower of any material change in the terms of the
25 residential mortgage loan prior to the closing of the loan. For purposes of this subsection,
26 a "material change means" any of the following:

27 a. A change in the type of loan being offered, such as a fixed or variable rate loan
28 or a loan with a balloon payment;

29 b. A change in the term of the loan, as reflected in the number of monthly payments
30 due before a final payment is scheduled to be made;

31 c. An increase in the interest rate of more than one-seventh of one percent, or an
32 equivalent increase in the amount of discount points charged;

33 d. An increase in the regular monthly payment of principal and interest of more
34 than five percent;

35 e. A change regarding the requirement or amount of escrow of taxes or insurance;

36 f. A change regarding the requirement or payment, or both, of private mortgage
37 insurance;

38 (b) Timely inform the borrower if any fees payable by the borrower to the licensee
39 increase by more than ten percent or one hundred dollars, whichever is greater.

40 (2) The disclosures required by this subsection shall be deemed timely if the licensee
41 provides the borrower with the revised information not later than three days after learning
42 of the change or twenty-four hours before the residential mortgage loan is closed,
43 whichever is earlier. If the licensee discloses a material change more than the three days
44 after learning of the change but still twenty-four hours before the residential mortgage

45 loan is closed, it shall not be liable for penalties or forfeitures if the licensee cures in time
46 for the borrower to avoid any damage.

47 (3) If an increase in the total amount of the fee to be paid by the borrower to the
48 broker is not disclosed in accordance with this subsection, the broker shall refund to the
49 borrower the amount by which the fee was increased. If the fee is financed into the
50 residential mortgage loan, the broker shall also refund to the borrower the interest charged
51 to finance the fee.

52 (4) Licensees limited to soliciting residential mortgage loan applications are not
53 required to provide the disclosures under this subsection as long as the solicitor does not
54 discuss the terms and conditions with the potential borrower.

55 3. When comparing different loans, the licensee shall not state or imply that
56 monthly loan payments, if they include amounts escrowed for payment of property taxes
57 and homeowner's insurance, are comparable with monthly loan payments that do not
58 include these amounts.

59 4. Licensees shall provide to the borrower a complete copy of any appraisal
60 obtained by the lender for use in underwriting the residential mortgage loan within three
61 business days of receipt by the licensee, but in no event less than twenty-four hours prior
62 to the day of closing. The appraisal may be sent via first class mail, commercial carrier,
63 by facsimile or by e-mail, if the borrower has supplied an e-mail address.

64 5. If the subject of a future loan is discussed by a licensee making, providing, or
65 arranging a mortgage loan, the licensee shall disclose the circumstances under which a new
66 loan could be considered. Such disclosure shall clearly state that it is not a contract and
67 that the licensee is not representing or promising that a new loan could or would be made
68 at any time in the future.

69 6. No licensee may make, provide, or arrange for a residential mortgage loan that
70 finances, directly or indirectly, any credit life, credit disability, or credit unemployment
71 insurance; however, insurance premiums calculated and paid on a monthly basis shall not
72 be considered to be financed by the lender.

73 7. A licensee shall not recommend or encourage default or the failure to make
74 timely payments on an existing residential mortgage loan or other debt prior to and in
75 connection with the closing or planned closing of a residential mortgage loan that
76 refinances all or any portion of the existing loan or debt.

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] **one hundred eighty** days, pending an investigation. **Upon**
19 **a showing that a licensee has failed to meet the experience or educational requirements of**
20 **section 443.821 or the requirements of subsection 3 of section 443.853, the director shall**
21 **suspend, prior to hearing as provided in sections 443.800 to 443.893, the license until those**
22 **requirements have been met.**

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

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

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

33 7. Whenever the director revokes or suspends a license issued pursuant to sections
34 443.800 to 443.893, the director shall execute in duplicate a written order to that effect. The
35 director shall publish notice of such order in a newspaper of general circulation in the county in
36 which the residential mortgage licensee's business is located and **post notice of the order on an**
37 **agency Internet web site maintained by the director and** shall serve a copy of such order
38 upon the licensee. Such order may be reviewed by the board.

39 8. When the director finds any person in violation of the grounds provided in subsection
40 9 of this section, the director may enter an order imposing one or more of the following
41 disciplinary actions:

42 (1) Revocation of the license;

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

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

47 (4) Issuance of a reprimand; [and]

48 (5) Denial of a license; **and**

49 **(6) Imposition of a fine not to exceed twenty-five thousand dollars for each count**
50 **of separate offense.**

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

53 (1) Being convicted or found guilty, regardless of pendency of an appeal, of a crime in
54 any jurisdiction which involves fraud, dishonest dealings, or any other act involving moral
55 turpitude;

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

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

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

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

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

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

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

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

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

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

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

81 (13) Failure to pay timely any fee or charge due under the provisions of sections 443.800
82 to 443.893;

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

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

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

90 (17) Failure to comply with, or any violation of, any provision of sections 443.800 to
91 443.893.

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

95 11. Such licensee shall be subject to suspension or revocation for employee actions only
96 if there is a pattern of repeated violations by an employee or employees or the licensee has
97 knowledge of the violation.

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

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

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

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

110 (2) Any licensee may surrender a license by delivering to the director written notice that
111 the licensee thereby surrenders such license, but surrender shall not affect the licensee's civil or
112 criminal liability for acts committed prior to surrender or entitle the licensee to a return of any
113 part of the license fee.

**443.884. 1. The director shall obtain from the United States Department of
2 Housing and Urban Development on a semiannual basis the default claim rates for
3 endorsements issued by such department.**

**4 2. The director shall conduct an examination of each licensee having a default rate
5 equal to or greater than five percent. This subsection shall not be construed as a limitation
6 of the director's examination authority under section 443.870 or as otherwise provided in
7 sections 443.800 to 443.893. The director may require a licensee to provide loan default
8 data as the director deems necessary for the proper enforcement of sections 443.800 to
9 443.893.**

**10 3. The purpose of the examination under subsection 2 of this section shall be to
11 determine whether the default rate of the licensee has resulted from practices which
12 deviate from sound and accepted mortgage underwriting practices, including but not
13 limited to credit fraud, appraisal fraud, and property inspection fraud. For the purpose
14 of conducting this examination, the director may accept materials prepared for the United
15 States Department of Housing and Urban Development. At the conclusion of the
16 examination, the director shall make his or her findings available to the board.**

**17 4. The director, at his or her discretion, may hold public hearings, or at the
18 direction of the board, shall hold public hearings. Such testimony shall be by a homeowner
19 or mortgagor or his or her agent, whose residential interest is affected by the activities of
20 the residential mortgage licensee subject to such hearing. At such public hearing, a witness
21 may present testimony on his or her behalf concerning only his or her home, or home
22 mortgage or a witness may authorize a third party to appear on his or her behalf. The
23 testimony shall be restricted to information and comments related to a specific residence
24 or specific residential mortgage application or applications for a residential mortgage or
25 residential loan transaction. The testimony shall be preceded by either a letter of
26 complaint or a completed consumer complaint form prescribed by the director.**

**27 5. The director shall, at the conclusion of the public hearings, release his or her
28 findings and shall also make public any action taken with respect to the licensee. The
29 director shall also give full consideration to the findings of this examination whenever
30 reapplication is made by the licensee for a new license under sections 443.800 to 443.893.**

**31 6. A licensee that is examined under subsection 2 of this section shall submit to the
32 director a plan which shall be designed to reduce that licensee's default rate to a figure that**

33 is less than five percent. The plan shall be implemented by the licensee as approved by the
34 director. A licensee that is examined under subsection 2 of this section shall report
35 monthly, for a one-year period, one-, two-, and three-month defaults.

36 7. Whenever the director finds that a licensee's default rate on insured mortgages
37 is unusually high within a particular geographic area, he or she shall require that licensee
38 to submit such information as is necessary to determine whether that licensee's practices
39 have constituted credit fraud, appraisal fraud, or property inspection fraud.

40 8. The director shall promulgate such rules as are necessary to determine whether
41 any licensee's default rate is unusually high within a particular area.

443.885. On or before March first of each year, each licensee, except those exempt
2 entities provided for in [subsection 8] **subdivision (8) of subsection 1** of section 443.803, shall
3 file a report with the director which shall disclose the following information with respect to the
4 immediately preceding calendar year:

5 (1) A list of home mortgages granted, issued, originated or closed during the report
6 period, with respect to which such licensee has had any connection. The list shall show for each
7 census tract, in regions where such census tracts have been established and by zip code in all
8 other regions, the number and aggregate dollar amount of applications for and the number
9 granted and aggregate dollar amount of:

10 (a) Conventional mortgage loans;

11 (b) Mortgage loans insured under the National Housing Act, 12 U.S.C. 1701, et seq.; and

12 (c) Mortgage loans guaranteed under the provisions of the Federal Veterans' Benefits
13 Act, 38 U.S.C. 3710 et seq.;

14 (2) List by zip code in those areas having no census tract:

15 (a) The total number of home mortgages on real estate situated in this state with respect
16 to which the licensee has had any connection and which are in default on the last day of the
17 reporting period; and

18 (b) The total number of claims paid during the reporting period on home mortgages with
19 respect to which the licensee has had any connection, including the date of the first default
20 thereon and the date each such foreclosure proceeding was instituted;

21 (3) If the director finds that another report that the licensee is required to compile is
22 equivalent to the annual report of mortgage activity, then the director may accept such report as
23 fulfilling the reporting requirements of this section;

24 (4) The director may also require by rule that licensees report such additional
25 information as is necessary to assure strict compliance with the provisions of sections 443.800
26 to 443.893.

443.886. In hearings conducted under sections 443.800 to 443.893, information presented into evidence that was acquired by the licensee when serving any individual in connection with a residential mortgage, including all financial information of the individual, shall be deemed strictly confidential and shall be made available only as part of the record of a hearing under sections 443.800 to 443.893 or:

- (1) When the record is required, in its entirety, for purposes of judicial review; or
- (2) Upon the express written consent of the individual served, or in the case of his or her death or disability, the consent of his or her personal representative.

443.888. Any person licensed under sections 443.800 to 443.893 or any other person may report to the director any information to show that a person subject to sections 443.800 to 443.893 is or may be in violation of sections 443.800 to 443.893.

443.890. 1. Any person or entity affected by a decision of the director under any provision of sections 443.800 to 443.893 may obtain review of such decision.

2. The director shall, in accordance with chapter 536, RSMo, promulgate rules and regulations to provide for review of his or her decisions affecting the rights of persons under sections 443.800 to 443.893. Such review shall provide for, at a minimum:

- (1) Appointment of a hearing officer other than a regular employee of the director;
- (2) Appropriate procedural rules, specific deadlines for filings, and standards of evidence and of proof;
- (3) Provision for apportioning costs among parties to the appeal.

3. All final determinations of appeals to decisions of the director may be reviewed in accordance with and under the provisions of chapter 536, RSMo. Appeals from all final orders and judgments entered by a court in review of any final administrative decision of the director or of any final agency review of a decision of the director may be taken as in other civil cases.

443.891. 1. Upon making any one or more of the following preliminary findings, the director may issue a notice of charges in support of an order of removal and prohibition, which order may remove and prohibit a named person or entity from participating in loan brokering, mortgage brokering or mortgage brokerage service for any loan secured by real estate whether in the affairs of an exempt entity or in the affairs of one or more licensees under sections 443.800 to 443.893, or in the affairs of any financial institution under the jurisdiction of the director. An order of removal or of prohibition may be permanent or for a specific term and may impose additional conditions including requiring restitution and imposition of a civil penalty not exceeding five thousand dollars per occurrence. The findings required by this section may be any one or more of the following:

11 (1) A finding that the person or entity subject to the order has been convicted of a crime
12 involving material financial loss to a licensee, a federally insured depository institution, a
13 government-sponsored enterprise, a Federal Home Loan Bank, a Federal Reserve Bank or any
14 other person;

15 (2) A finding that the person or entity subject to the order has, in connection with the
16 application for or procurement of a loan secured by real estate, made any material misstatement,
17 misrepresentation, or omission. As used in this section, "material" means important information
18 about which the board should be informed and which may influence a licensing or lending
19 decision;

20 (3) A finding that the person subject to the order has pleaded guilty to, entered a plea of
21 nolo contendere to, or been found guilty of mortgage fraud as defined in section 570.310, RSMo;

22 **(4) A finding prepared by a hearing officer under a hearing held under sections**
23 **443.800 to 443.893 that the person subject to the order, while an employee of a licensee, has**
24 **knowingly submitted or caused to be submitted any document that contains willful and**
25 **material misstatement of facts and which is used in connection with any licensable activity.**

26 2. If a hearing is requested, the director or his or her designee shall conduct a hearing
27 under chapter 536, RSMo.

28 3. If the respondent defaults, consents to an order of removal and prohibition, or if upon
29 the record the director finds the grounds specified supporting a removal and prohibition are
30 established, the director may issue such an order including conditions for restitution or for a civil
31 penalty not to exceed five thousand dollars per occurrence to be effective thirty days after service
32 and to remain in effect and enforceable except to the extent it is stayed, modified, terminated or
33 set aside by action of the director or a reviewing court.

443.892. Beginning August 28, 2009, it is unlawful for any person to act or assume
2 **to act as a loan originator without being registered with the director unless the person is**
3 **exempt under section 443.803. The director shall promulgate rules prescribing the criteria**
4 **for the registration and regulation of loan originators, including but not limited to,**
5 **qualifications, fees, examination, education, supervision, and enforcement.**

443.915. A licensee shall act in good faith in all relations with a borrower, including
2 **but not limited to, transferring, dealing in, offering, or making a reverse mortgage loan.**
3 **No licensee shall employ fraudulent or deceptive acts or practices in the making of a**
4 **reverse mortgage loan, including deceptive marketing and sales efforts.**

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