

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2201

95TH GENERAL ASSEMBLY

5163L.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 443.701, 443.703, 443.731, and 443.849, RSMo, and to enact in lieu thereof five new sections relating to the Missouri secure and fair enforcement residential mortgage licensing act, with an emergency clause.

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

Section A. Sections 443.701, 443.703, 443.731, and 443.849, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 443.701, 443.703, 443.704,
3 443.731, and 443.849, to read as follows:

443.701. Sections 443.701 to 443.893 shall be known and may be cited as the "Missouri
2 Secure and Fair Enforcement for Mortgage Licensing [and Residential Mortgage Brokers
3 Licensing] Act".

443.703. 1. For the purposes of sections 443.701 to 443.893, the following terms mean:
2 (1) "Advertisement", the attempt by publication, dissemination, or circulation to induce,
3 directly or indirectly, any person to apply for a loan to be secured by residential real estate;

4 (2) "Affiliate":

5 (a) Any person who directly controls or is controlled by a residential mortgage loan
6 broker and any other company that is directly affecting activities regulated by sections 443.701
7 to 443.893 that is controlled by the company that controls the residential mortgage loan broker;

8 (b) Any person:

9 a. Who is controlled, directly or indirectly, by a trust or otherwise by or for the benefit
10 of shareholders who beneficially, or otherwise, controls, directly or indirectly, by trust or
11 otherwise, the residential mortgage loan broker or any company that controls the residential
12 mortgage loan broker; or

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

- 13 b. A majority of the directors or trustees of which constitute a majority of the persons
14 holding any such office with the residential mortgage loan broker or any company that controls
15 the residential mortgage loan broker; **or**
- 16 (c) Any company, including a real estate investment trust, that is sponsored and advised
17 on a contractual basis by the residential mortgage loan broker or any subsidiary or affiliate of the
18 residential mortgage loan broker;
- 19 (3) "Board", the residential mortgage board created in section 443.816;
- 20 (4) "Borrower", the person or persons who use the services of a licensee to obtain a
21 residential mortgage loan;
- 22 (5) "Depository institution", the same meaning as such term is defined in Section 3 of
23 the Federal Deposit Insurance Act, and includes any credit union;
- 24 (6) "Director", the director of the division of finance;
- 25 (7) "Division", the division of finance within the department of insurance, financial
26 institutions and professional registration;
- 27 (8) "Dwelling", the same meaning as such term is defined in the federal Truth In Lending
28 Act;
- 29 (9) "Escrow agent", a third party or person charged with the fiduciary obligation for
30 holding escrow funds on a residential mortgage loan pending final payout of such funds in
31 accordance with the terms of the residential mortgage loan;
- 32 (10) "Exempt person", the following persons:
- 33 (a) Any person that is a depository institution or [first-tier] **a direct or indirect**
34 subsidiary or service corporation thereof;
- 35 (b) Any person engaged solely in commercial mortgage lending or any person making
36 or acquiring commercial construction loans with the person's own funds for the person's own
37 investment;
- 38 (c) Any person engaged solely in the business of securing existing loans on the secondary
39 market provided such person does not make decisions about the extension of credit to the
40 borrower;
- 41 (d) Any wholesale mortgage lender who purchases existing mortgage loans provided
42 such wholesale lender does not make decisions about the extension of credit to the borrower;
- 43 (e) **Any first tier subsidiary or a service corporation of a bank holding company;**
- 44 (f) **In accordance with the exemption set forth in section 443.704, any mortgage**
45 **banker. For purposes of this paragraph, "mortgage banker" means a mortgage loan**
46 **company which is subject to licensing, supervision, or annual audit requirements by the**
47 **Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage**
48 **Corporation (FHLMC), or the United States Veterans Administration (VA), or the United**

49 **States Department of Housing and Urban Development (HUD), or a successor of any of the**
50 **foregoing agencies or entities, as an approved lender, loan correspondent, seller, or**
51 **servicer;**

52 (11) "Federal banking agencies", the Board of Governors of the Federal Reserve System,
53 the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National
54 Credit Union Administration, and the Federal Deposit Insurance Corporation;

55 (12) "Full-service office", office and staff in Missouri reasonably adequate to handle
56 efficiently communications, questions, and other matters relating to any application for a new
57 or existing home mortgage loan which the residential mortgage loan broker is brokering,
58 funding, originating, purchasing, or servicing. The management and operation of each
59 full-service office shall include observance of good business practices such as adequate,
60 organized, and accurate books and records, ample phone lines, hours of business, staff training
61 and supervision, and provision for a mechanism to resolve consumer inquiries, complaints, and
62 problems. The director shall promulgate rules with regard to the requirements of this subdivision
63 and shall include an evaluation of compliance with this subdivision in the periodic examination
64 of the residential mortgage loan broker;

65 (13) "Immediate family member", a spouse, child, sibling, parent, grandparent, or
66 grandchild. Immediate family member includes stepparents, stepchildren, stepsiblings, and
67 adoptive relationships;

68 (14) "Individual", a natural person;

69 (15) "Individual mortgage loan servicer", a person who on behalf of a lender or servicer
70 licensed by this state collects or receives payments including payments of principal, interest,
71 escrow amounts, and other amounts due on existing obligations due and owing to the licensed
72 lender or servicer for a residential mortgage loan when the borrower is in default, or in
73 reasonably foreseeable likelihood of default, working with the borrower and the licensed lender
74 or servicer, collects data and makes decisions necessary to modify either temporarily or
75 permanently certain terms of those obligations, or otherwise finalizing collection through the
76 foreclosure process;

77 (16) "Lender", any person who either lends money for or invests money in residential
78 mortgage loans;

79 (17) "Licensee", any person licensed under sections 443.701 to 443.893;

80 (18) "Loan brokering", "mortgage brokering", or "mortgage brokerage service", the act
81 of helping to obtain for an investor or from an investor for a borrower a residential mortgage loan
82 secured by real estate situated in Missouri or assisting an investor or a borrower in obtaining a
83 residential mortgage loan secured by real estate situated in Missouri in return for consideration;

84 (19) "Loan processor or underwriter", an individual who performs clerical or support
85 duties as an employee at the direction of and subject to the supervision and instruction of a
86 person licensed or exempt from licensing under sections 443.701 to 443.893;

87 (a) For purposes of this definition, clerical or support duties may include activities
88 subsequent to the receipt of a residential mortgage loan application, including:

89 a. The receipt, collection, distribution, and analysis of information common for the
90 processing or underwriting of a residential mortgage loan; and

91 b. Communicating with a consumer to obtain the information necessary for the
92 processing or underwriting of a loan, to the extent that such communication does not include
93 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage
94 loan rates or terms;

95 (b) For an individual to be considered engaged solely in loan processor or underwriter
96 activities, such individual shall not represent to the public through advertising or other means
97 of communicating or providing information, including the use of business cards, stationery,
98 brochures, signs, rate lists, or other promotional items, that such individual can or will perform
99 any of the activities of a mortgage loan originator;

100 (20) "Mortgage loan originator", an individual who for compensation or gain or in the
101 expectation of compensation or gain takes a residential mortgage loan application[, or] **directly**
102 **from the borrower or customer through a common or customary source, and** offers or
103 negotiates terms of a residential mortgage loan. Mortgage loan originator does not include:

104 (a) An individual engaged solely as a loan processor or underwriter except as otherwise
105 provided in sections 443.701 to 443.893;

106 (b) A person that only performs real estate brokerage activities and is licensed or
107 registered in accordance with Missouri law, unless the person is compensated by a lender, a
108 mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage
109 broker, or other mortgage loan originator;

110 (c) A person solely involved in extensions of credit relating to time-share plans, as the
111 term time-share plans is defined in section 101(53D) of Title 11, United States Code;

112 (d) An individual who is servicing a mortgage loan; and

113 (e) A person employed by a licensed mortgage broker or loan originator who accepts or
114 receives residential mortgage loan applications;

115 (21) "Nationwide Mortgage Licensing System and Registry" or "NMLSR", a mortgage
116 licensing system developed and maintained by the Conference of State Bank Supervisors and the
117 American Association of Residential Mortgage Regulators for the licensing and registration of
118 licensed mortgage loan originators or licensed residential mortgage brokers;

- 119 (22) "Nontraditional mortgage product", any mortgage product other than a thirty-year
120 fixed rate mortgage;
- 121 (23) "Party to a residential mortgage financing transaction", a borrower, lender, or loan
122 broker in a residential mortgage financing transaction;
- 123 (24) "Payments", payment of all or any part of the following: principal, interest and
124 escrow reserves for taxes, insurance, and other related reserves and reimbursement for lender
125 advances;
- 126 (25) "Person", a natural person, corporation, company, limited liability company,
127 partnership, or association;
- 128 (26) "Purchasing", the purchase of conventional or government-insured mortgage loans
129 secured by residential real estate from either the lender or from the secondary market;
- 130 (27) "Real estate brokerage activity", any activity that involves offering or providing real
131 estate brokerage services to the public, including:
- 132 (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
133 of real property;
- 134 (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange
135 of real property;
- 136 (c) Negotiating on behalf of any buyer, seller or lessor any portion of a contract relating
137 to the sale, purchase, lease, rental, or exchange of real property, but not activity to obtain a
138 residential mortgage loan for a borrower other than bona fide seller financing;
- 139 (d) Engaging in any activity for which a person engaged in the activity is required to be
140 registered or licensed as a real estate agent or real estate broker under any applicable law; and
- 141 (e) Offering to engage in any authorized activity or act in any authorized capacity
142 described in paragraph (a), (b), (c), or (d) of this subdivision;
- 143 (28) "Residential mortgage board", the residential mortgage board created in section
144 443.816;
- 145 (29) "Residential mortgage financing transaction", the negotiation, acquisition, sale, or
146 arrangement for or the offer to negotiate, acquire, sell, or arrange for a residential mortgage loan
147 or residential mortgage loan commitment;
- 148 (30) "Residential mortgage loan", any loan primarily for personal, family, or household
149 use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest
150 on a dwelling or residential real estate upon which is constructed or intended to be constructed
151 a dwelling;
- 152 (31) "Residential mortgage loan broker", any person, other than an exempt person,
153 engaged in the business of brokering, funding, servicing, or purchasing residential mortgage
154 loans;

- 155 (32) "Residential mortgage loan brokerage agreement", a written agreement in which a
156 residential mortgage broker agrees to do either of the following:
- 157 (a) Obtain a residential mortgage loan for the borrower or assist the borrower in
158 obtaining a residential mortgage loan; or
- 159 (b) Consider making a residential mortgage loan to the borrower;
- 160 (33) "Residential mortgage loan commitment", a written conditional agreement to
161 finance a residential mortgage loan;
- 162 (34) "Registered mortgage loan originator", any individual who:
- 163 (a) Meets the definition of mortgage loan originator and is an employee of:
- 164 a. A depository institution;
- 165 b. A subsidiary or service corporation that is:
- 166 (i) Owned and controlled by a depository institution; and
- 167 (ii) Regulated by a federal banking agency; or
- 168 c. An institution regulated by the Farm Credit Administration; and
- 169 (b) Is registered with and maintains a unique identifier through, the NMLSR;
- 170 (35) "Residential real estate", any real property located in Missouri upon which is
171 constructed or intended to be constructed a dwelling;
- 172 (36) "Servicing", the collection or remittance for, or the right or obligation to collect or
173 remit for, any lender, noteowner, noteholder or for a residential mortgage loan broker's own
174 account of payments, interests, principal and trust items such as hazard insurance and taxes on
175 a residential mortgage loan and includes loan payment follow-up, delinquency loan follow-up,
176 loan analysis and any notifications to the borrower that are necessary to enable the borrower to
177 keep the loan current and in good standing;
- 178 (37) "Soliciting, processing, placing, or negotiating a residential mortgage loan", for
179 compensation or gain, either directly or indirectly accepting or offering to accept an application
180 for a residential mortgage loan, assisting or offering to assist in the processing of an application
181 for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate
182 the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower,
183 including but not limited to the submission of credit packages for the approval of lenders, the
184 preparation of residential mortgage loan closing documents, and including a closing in the name
185 of a broker;
- 186 (38) "Ultimate equitable owner", a person who, directly or indirectly, owns or controls
187 an ownership interest in a corporation, foreign corporation, alien business organization, trust, or
188 any other form of business organization regardless of whether the person owns or controls the
189 ownership interest through one or more persons or one or more proxies, powers of attorney,

190 nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities
191 or devices, or any combination thereof;

192 (39) "Unique identifier", a number or other identifier assigned by protocols established
193 by the NMLSR.

194 2. The director may define by rule any terms used in sections 443.701 to 443.893 for
195 efficient and clear administration.

443.704. A financial institution, as defined in section 381.410, shall be exempt from
2 **the licensure requirements of sections 443.706 and 443.707 until such time as the**
3 **Nationwide Mortgage Licensing System and Registry under the SAFE Act provisions of**
4 **the federal Housing and Economic Recovery Act of 2008 is operational. The state division**
5 **of finance shall notify the revisor of statutes when such system and registry becomes**
6 **operational.**

443.731. 1. (1) Each mortgage loan originator shall be covered by the surety bond for
2 the Missouri licensed mortgage broker supervising the mortgage loan originator and for whom
3 the mortgage loan originator acts as an employee or exclusive agent.

4 (2) The surety bond shall be in a form as prescribed by the director and shall provide
5 coverage in an amount as prescribed in subsection 2 of this section.

6 (3) The director may promulgate rules with respect to the requirements for such surety
7 bonds as are necessary to accomplish the purposes of sections 443.701 to 443.893.

8 2. The penal sum of the surety bond shall be maintained in an amount that reflects **solely**
9 the dollar amount of loans originated **annually** as determined by the director but shall in no case
10 be less than fifty thousand dollars or more than one million dollars.

11 3. When an action is commenced on a licensee's bond, the director may require the filing
12 of a new bond.

13 4. Immediately upon recovery on the bond, the licensee shall file a new bond.

443.849. 1. Residential mortgage loan brokers shall deliver a surety bond to the director
2 prior to the issuance or renewal of a license:

3 (1) The surety bond shall provide coverage in an amount as prescribed in subsection 2
4 of this section;

5 (2) The surety bond shall be in a form as prescribed by the director;

6 (3) Such bond shall be issued by a bonding or insurance company authorized to do
7 business in Missouri and shall secure the faithful performance of the applicant, its employees or
8 agents, including mortgage loan originators, in connection with the activities of originating,
9 servicing, or acquiring mortgage loans;

10 (4) The director may promulgate rules with respect to the requirements for such surety
11 bonds as are necessary to accomplish the purposes of sections 443.701 to 443.893.

12 2. The penal sum of the surety bond shall be maintained in an amount that reflects **solely**
13 the dollar amount of loans originated **annually** by the residential mortgage loan broker as
14 determined by the director but in no case shall be less than fifty thousand dollars or more than
15 one million dollars.

16 3. When an action is commenced on a licensee's bond, the director may require the filing
17 of a new bond.

18 4. Immediately upon any recovery on the bond, the licensee shall file a new bond.

19 5. The surety bond is for the protection of borrowers and the director may make a claim
20 on the bond on behalf of any borrower sustaining injury as the result of the actions of a licensee
21 not in compliance with or in violation of any of the provisions of sections 443.701 to 443.893.

22 6. In lieu of presenting a claim directly, the director may release the bond to a borrower
23 or the borrower's attorney to present a claim.

24 7. The surety may cancel or withdraw the bond under such terms as the director may
25 prescribe but the bond shall cover any actions that occurred while the bond was in place for the
26 applicable period of limitations under statute and so long as the bond is not exhausted by valid
27 claims of borrowers.

 Section B. Because immediate action is necessary to prevent a reduction in mortgage
2 lending in this state, section A of this act is deemed necessary for the immediate preservation of
3 the public health, welfare, peace, and safety, and is hereby declared to be an emergency act
4 within the meaning of the constitution, and section A of this act shall be in full force and effect
5 upon its passage and approval.

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