

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2201

AN ACT

To repeal sections 443.701 and 443.703, RSMo, and to enact in lieu thereof three 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Section A. Sections 443.701 and 443.703, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 443.701, 443.703, and 443.704, to read as follows:

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

443.703. 1. For the purposes of sections 443.701 to 443.893, the following terms mean:

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

(2) "Affiliate":

(a) Any person who directly controls or is controlled by a residential mortgage loan broker and any other company that is

directly affecting activities regulated by sections 443.701 to 443.893 that is controlled by the company that controls the residential mortgage loan broker;

(b) Any person:

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

b. A majority of the directors or trustees of which constitute a majority of the persons holding any such office with the residential mortgage loan broker or any company that controls the residential mortgage loan broker; or

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

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

(4) "Borrower", the person or persons who use the services of a licensee to obtain a residential mortgage loan;

(5) "Depository institution", the same meaning as such term is defined in Section 3 of the Federal Deposit Insurance Act, and includes any credit union;

(6) "Director", the director of the division of finance;

(7) "Division", the division of finance within the department of insurance, financial institutions and professional registration;

(8) "Dwelling", the same meaning as such term is defined in the federal Truth In Lending Act;

(9) "Escrow agent", a third party or person charged with the fiduciary obligation for holding escrow funds on a residential mortgage loan pending final payout of such funds in accordance with the terms of the residential mortgage loan;

(10) "Exempt person", the following persons:

(a) Any person that is a depository institution or first-tier subsidiary or service corporation thereof;

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

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

(d) Any wholesale mortgage lender who purchases existing mortgage loans provided such wholesale lender does not make decisions about the extension of credit to the borrower;

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

(12) "Full-service office", office and staff in Missouri reasonably adequate to handle efficiently communications, questions, and other matters relating to any application for a new or existing home mortgage loan which the residential mortgage

loan broker is brokering, funding, originating, purchasing, or servicing. The management and operation of each full-service office shall include observance of good business practices such as adequate, organized, and accurate books and records, ample phone lines, hours of business, staff training and supervision, and provision for a mechanism to resolve consumer inquiries, complaints, and problems. The director shall promulgate rules with regard to the requirements of this subdivision and shall include an evaluation of compliance with this subdivision in the periodic examination of the residential mortgage loan broker;

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

(14) "Individual", a natural person;

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

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

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

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

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

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

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

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

(b) For an individual to be considered engaged solely in loan processor or underwriter activities, such individual shall not represent to the public through advertising or other means of

communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(20) "Mortgage loan originator", an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. Mortgage loan originator does not include:

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

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

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

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

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

(21) "Nationwide Mortgage Licensing System and Registry" or "NMLSR", a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American

Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators or licensed residential mortgage brokers;

(22) "Nontraditional mortgage product", any mortgage product other than a thirty-year fixed rate mortgage;

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

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

(25) "Person", a natural person, corporation, company, limited liability company, partnership, or association;

(26) "Purchasing", the purchase of conventional or government-insured mortgage loans secured by residential real estate from either the lender or from the secondary market;

(27) "Real estate brokerage activity", any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating on behalf of any buyer, seller or lessor any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, but not activity to obtain a residential mortgage loan for a borrower other than bona fide

seller financing;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any authorized activity or act in any authorized capacity described in paragraph (a), (b), (c), or (d) of this subdivision;

(28) "Residential mortgage board", the residential mortgage board created in section 443.816;

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

(30) "Residential mortgage loan", any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(31) "Residential mortgage loan broker", any person, other than an exempt person, engaged in the business of brokering, funding, servicing, or purchasing residential mortgage loans;

(32) "Residential mortgage loan brokerage agreement", a written agreement in which a residential mortgage broker agrees to do either of the following:

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

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

(33) "Residential mortgage loan commitment", a written conditional agreement to finance a residential mortgage loan;

(34) "Registered mortgage loan originator", any individual who:

(a) Meets the definition of mortgage loan originator and is an employee of:

a. A depository institution;

b. A subsidiary or service corporation that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

c. An institution regulated by the Farm Credit Administration; and

(b) Is registered with and maintains a unique identifier through, the NMLSR;

(35) "Residential real estate", any real property located in Missouri upon which is constructed or intended to be constructed a dwelling;

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

(37) "Soliciting, processing, placing, or negotiating a residential mortgage loan", for compensation or gain, either

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

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

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

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

443.704. An exempt person as defined prior to July 8, 2009, shall not be required to meet the licensing requirements of sections 443.706 and 443.707 of the Nationwide Mortgage Licensing System and Registry under the SAFE Act provisions of the federal

Housing and Economic Recovery Act of 2008 between July 8, 2009, and June 1, 2010. Any exempt person, as defined prior to July 8, 2009, already licensed between July 8, 2009, and June 1, 2010, shall not be eligible for any refund of licensure fees.

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