

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2201

AN ACT

To repeal sections 443.701, 443.703, 443.805, and 475.190, RSMo, and to enact in lieu thereof four new sections relating to financial institutions, with an emergency clause for certain sections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 443.701, 443.703, 443.805, and 475.190,
2 RSMo, are repealed and four new sections enacted in lieu thereof,
3 to be known as sections 443.701, 443.703, 443.805, and 475.190,
4 to read as follows:

5 443.701. Sections 443.701 to 443.893 shall be known and may
6 be cited as the "Missouri Secure and Fair Enforcement for
7 Mortgage Licensing [and Residential Mortgage Brokers Licensing]
8 Act".

9 443.703. 1. For the purposes of sections 443.701 to
10 443.893, the following terms mean:

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

1 estate;

2 (2) "Affiliate":

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

8 (b) Any person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (12) "Full-service office", office and staff in Missouri
2 reasonably adequate to handle efficiently communications,
3 questions, and other matters relating to any application for a
4 new or existing home mortgage loan which the residential mortgage
5 loan broker is brokering, funding, originating, purchasing, or
6 servicing. The management and operation of each full-service
7 office shall include observance of good business practices such
8 as adequate, organized, and accurate books and records, ample
9 phone lines, hours of business, staff training and supervision,
10 and provision for a mechanism to resolve consumer inquiries,
11 complaints, and problems. The director shall promulgate rules
12 with regard to the requirements of this subdivision and shall
13 include an evaluation of compliance with this subdivision in the
14 periodic examination of the residential mortgage loan broker;

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

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

20 (15) "Individual mortgage loan servicer", a person who on
21 behalf of a lender or servicer licensed by this state collects or
22 receives payments including payments of principal, interest,
23 escrow amounts, and other amounts due on existing obligations due
24 and owing to the licensed lender or servicer for a residential
25 mortgage loan when the borrower is in default, or in reasonably
26 foreseeable likelihood of default, working with the borrower and
27 the licensed lender or servicer, collects data and makes
28 decisions necessary to modify either temporarily or permanently

1 certain terms of those obligations, or otherwise finalizing
2 collection through the foreclosure process;

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

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

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

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

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

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

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

1 residential mortgage loan rates or terms;

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

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

14 (a) An individual engaged solely as a loan processor or
15 underwriter except as otherwise provided in sections 443.701 to
16 443.893;

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

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

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

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

1 applications;

2 (21) "Nationwide Mortgage Licensing System and Registry" or
3 "NMLSR", a mortgage licensing system developed and maintained by
4 the Conference of State Bank Supervisors and the American
5 Association of Residential Mortgage Regulators for the licensing
6 and registration of licensed mortgage loan originators or
7 licensed residential mortgage brokers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 a. A depository institution;

12 b. A subsidiary or service corporation that is:

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

14 (ii) Regulated by a federal banking agency; or

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

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

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

22 (36) "Servicing", the collection or remittance for, or the
23 right or obligation to collect or remit for, any lender,
24 noteowner, noteholder or for a residential mortgage loan broker's
25 own account of payments, interests, principal and trust items
26 such as hazard insurance and taxes on a residential mortgage loan
27 and includes loan payment follow-up, delinquency loan follow-up,
28 loan analysis and any notifications to the borrower that are

1 necessary to enable the borrower to keep the loan current and in
2 good standing;

3 (37) "Soliciting, processing, placing, or negotiating a
4 residential mortgage loan", for compensation or gain, either
5 directly or indirectly accepting or offering to accept an
6 application for a residential mortgage loan, assisting or
7 offering to assist in the processing of an application for a
8 residential mortgage loan on behalf of a borrower, or negotiating
9 or offering to negotiate the terms or conditions of a residential
10 mortgage loan with a lender on behalf of a borrower, including
11 but not limited to the submission of credit packages for the
12 approval of lenders, the preparation of residential mortgage loan
13 closing documents, and including a closing in the name of a
14 broker;

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

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

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

1 443.805. 1. No person shall engage in the business of
2 brokering, funding, servicing or purchasing of residential
3 mortgage loans without first obtaining a license as a residential
4 mortgage loan broker from the director, pursuant to sections
5 443.701 to 443.893 and the regulations promulgated thereunder.
6 The licensing provisions of sections 443.805 to 443.812 shall not
7 apply to any person engaged solely in commercial mortgage lending
8 or to any person exempt as provided in section 443.703 or
9 pursuant to regulations promulgated as provided in sections
10 443.701 to 443.893.

11 2. No person except a licensee or exempt person shall do
12 any business under any name or title or circulate or use any
13 advertising or make any representation or give any information to
14 any person which indicates or reasonably implies activity within
15 the scope of the provisions of sections 443.701 to 443.893.

16 3. Any exempt entity as defined by section 443.803 on July
17 7, 2009 shall be exempt from the licensing requirements of this
18 section until June 1, 2010. Any such exempt entities already
19 licensed between July 8, 2009 and June 1, 2010 shall not be
20 eligible for any refund of licensure fees.

21 475.190. 1. On or after August 28, 2009, the conservator
22 shall invest liquid assets of the estate of the protectee, other
23 than funds needed to meet debts and expenses currently payable,
24 in accordance with the provisions of the Missouri prudent
25 investor act, sections 469.900 to 469.913, RSMo, subject to the
26 following exceptions:

27 (1) Investment of any part or all of the liquid assets:

28 (a) In direct obligation of or obligations unconditionally

1 guaranteed as to principal and interest by the United States; or

2 (b) In interest-bearing accounts and time deposits,
3 including time certificates of deposit, in financial institutions
4 to the extent the account or deposits are insured by the Federal
5 Deposit Insurance Corporation or the National Credit Union Share
6 Insurance Fund, shall constitute prudent investments;

7 (2) If the conservator determines it appropriate to
8 delegate investment and management functions to an agent as
9 provided in section 469.909, RSMo, the agent to whom the
10 delegation is made shall acknowledge in a writing delivered to
11 the conservator that the agent is acting as an investment
12 fiduciary on the account.

13 2. Every conservator shall make a report at every annual
14 settlement of the disposition made by the conservator of the
15 money belonging to the protectee entrusted to the conservator.
16 If it appears that the money is invested in securities, then the
17 conservator shall report a detailed description of the securities
18 and shall describe any real estate security and state where it is
19 situated, and its value, which report shall be filed in the
20 court. The court shall carefully examine into the report as soon
21 as made, and, if in the opinion of the court the security is
22 insufficient, the court shall make such orders as are necessary
23 to protect the interest of the protectee. The conservator and
24 the conservator's sureties are liable on their bond for any
25 omission to comply with the orders of the court. If the money
26 has not been invested as authorized by law the conservator shall
27 state that fact and the reasons, and shall state that the
28 conservator has been unable to make an investment after diligent

1 effort to do so.

2 3. If any conservator refuses or neglects to make the
3 report at the time aforesaid, or makes a false report thereof,
4 the conservator and the conservator's sureties are liable on
5 their bond for all loss or damage to the protectee occasioned by
6 reason of the conservator's neglect or refusal so to report, or
7 by making a false report, and the conservator may, on account
8 thereof, be removed from the conservator's trust in the
9 discretion of the court.

10 Section B. Because immediate action is necessary to prevent
11 a reduction in mortgage lending in this state, sections 443.701,
12 443.703, and 443.805 of section A of this act is deemed necessary
13 for the immediate preservation of the public health, welfare,
14 peace, and safety, and is hereby declared to be an emergency act
15 within the meaning of the constitution, and sections 443.701,
16 443.703, and 443.805 of section A of this act shall be in full
17 force and effect upon its passage and approval.