

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 2201**  
**95TH GENERAL ASSEMBLY**

5163S.06T

2010

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**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.

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

Section A. Sections 443.701, 443.703, 443.805, and 475.190, RSMo, are repealed and  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

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

- 9           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
- 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 subsidiary or service  
34 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 (11) "Federal banking agencies", the Board of Governors of the Federal Reserve System,  
44 the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National  
45 Credit Union Administration, and the Federal Deposit Insurance Corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

          475.190. 1. On or after August 28, 2009, the conservator shall invest liquid assets of the  
2 estate of the protectee, other than funds needed to meet debts and expenses currently payable,  
3 in accordance with the provisions of the Missouri prudent investor act, sections 469.900 to  
4 469.913, RSMo, subject to the following exceptions:

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

6           (a) In direct obligation of or obligations unconditionally guaranteed as to principal and  
7 interest by the United States; or

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

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

16           2. Every conservator shall make a report at every annual settlement of the disposition  
17 made by the conservator of the money belonging to the protectee entrusted to the conservator.  
18 If it appears that the money is invested in securities, then the conservator shall report a detailed  
19 description of the securities and shall describe any real estate security and state where it is

20 situated, and its value, which report shall be filed in the court. The court shall carefully examine  
21 into the report as soon as made, and, if in the opinion of the court the security is insufficient, the  
22 court shall make such orders as are necessary to protect the interest of the protectee. The  
23 conservator and the conservator's sureties are liable on their bond for any omission to comply  
24 with the orders of the court. If the money has not been invested as authorized by law the  
25 conservator shall state that fact and the reasons, and shall state that the conservator has been  
26 unable to make an investment after diligent effort to do so.

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

Section B. Because immediate action is necessary to prevent a reduction in mortgage  
2 lending in this state, sections 443.701, 443.703, and 443.805 of section A of this act is deemed  
3 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is  
4 hereby declared to be an emergency act within the meaning of the constitution, and sections  
5 443.701, 443.703, and 443.805 of section A of this act shall be in full force and effect upon its  
6 passage and approval.

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