

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 382
95TH GENERAL ASSEMBLY

1152L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 443.800, 443.803, 443.805, 443.807, 443.809, 443.810, 443.812, 443.816, 443.817, 443.819, 443.821, 443.823, 443.825, 443.827, 443.830, 443.833, 443.835, 443.837, 443.839, 443.841, 443.843, 443.845, 443.847, 443.849, 443.851, 443.853, 443.855, 443.857, 443.859, 443.861, 443.863, 443.865, 443.867, 443.869, 443.879, 443.881, 443.883, 443.885, 443.887, 443.889, 443.891, and 443.893, RSMo, and to enact in lieu thereof fifty-eight new sections relating to the regulation of residential mortgage professionals, with penalty provisions and an emergency clause.

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

Section A. Sections 443.800, 443.803, 443.805, 443.807, 443.809, 443.810, 443.812, 443.816, 443.817, 443.819, 443.821, 443.823, 443.825, 443.827, 443.830, 443.833, 443.835, 443.837, 443.839, 443.841, 443.843, 443.845, 443.847, 443.849, 443.851, 443.853, 443.855, 443.857, 443.859, 443.861, 443.863, 443.865, 443.867, 443.869, 443.879, 443.881, 443.883, 443.885, 443.887, 443.889, 443.891, and 443.893, RSMo, are repealed and fifty-eight new sections enacted in lieu thereof, to be known as sections 443.701, 443.703, 443.706, 443.707, 443.709, 443.711, 443.713, 443.717, 443.719, 443.721, 443.723, 443.725, 443.727, 443.729, 443.731, 443.733, 443.735, 443.737, 443.739, 443.741, 443.743, 443.745, 443.747, 443.805, 443.807, 443.809, 443.810, 443.812, 443.816, 443.817, 443.819, 443.821, 443.823, 443.825, 443.827, 443.830, 443.833, 443.835, 443.839, 443.841, 443.843, 443.845, 443.849, 443.855, 443.857, 443.861, 443.863, 443.865, 443.867, 443.869, 443.879, 443.881, 443.883, 443.885, 443.887, 443.889, 443.891, and 443.893, 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;

(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:

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

(ii) 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 timeshare 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:

(i) A depository institution;

(ii) A subsidiary or service corporation that is:

i. Owned and controlled by a depository institution; and

ii. Regulated by a federal banking agency; or

(iii) 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.

443.706. 1. No individual, unless exempted under subsection 3 of this section, shall engage in the business of a mortgage loan originator concerning any dwelling located in Missouri without first obtaining and

maintaining a license under sections 443.701 to 443.893 and obtaining employment and acting under the supervision of a single Missouri licensed residential mortgage broker. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the NMLSR.

2. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection 1 of this section shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development under the authority granted under Public Law 110-289, Section 1508(a).

3. The following are exempt from sections 443.701 to 443.893:

(1) Registered mortgage loan originators when employed and acting under subdivision (34) of subsection 1 of section 443.703;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney 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.

443.707. A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter for a Missouri residential real estate loan unless such independent contractor loan processor or underwriter obtains and maintains a license under section 443.706. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the NMLSR. Each independent contractor loan processor or underwriter shall certify annually under oath to the director that they shall not engage in the activities of a mortgage loan originator absent full compliance with section 443.706.

443.709. To implement an orderly and efficient licensing process for mortgage loan originators, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. The director may establish expedited review and licensing procedures for individuals previously licensed as a residential mortgage loan broker in Missouri or for individuals who were previously an ultimate equitable owner of a residential mortgage loan broker in Missouri.

443.711. 1. Applicants for a mortgage loan originator license shall apply in a form as prescribed by the director. Each such form shall contain content as set forth by rule, instruction, or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of sections 443.701 to 443.893.

2. In order to fulfill the purposes of sections 443.701 to 443.893, the director is authorized to establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to sections 443.701 to 443.893.

3. For the purpose of participating in the NMLSR, the director is authorized to modify, in whole or in part, by rule or order, the requirements of sections 443.701 to 443.893 as necessary to participate in the

NMLSR.

4. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the NMLSR information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or person authorized to receive such information for a state, national, and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the director to obtain:

(a) An independent credit report from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act. No applicant would be denied a license solely on the basis of a credit score; and

(b) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

5. For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivision (1) of subsection 4 of this section and paragraph (b) of subdivision (2) of subsection 4 of this section, the director may use the NMLSR as an agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

6. For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of paragraphs (a) and (b) of subdivision (2) of subsection 4 of this section, the director may use the NMLSR as an agent for requesting and distributing information to and from any source so directed by the director.

443.713. The director shall not issue a mortgage loan originator license unless the director makes, at a minimum, the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction; except that, a subsequent formal vacation of such revocation shall not be deemed a revocation;

(2) The applicant has not been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(a) During the seven-year period preceding the date of the application for licensing and registration; or

(b) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; and

(c) Provided that any pardon of a conviction shall not be a conviction for purposes of this subdivision;

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator shall operate honestly, fairly, and efficiently within the purposes of sections 443.701 to 443.893;

(a) For purposes of this subdivision, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

a. Current outstanding judgments, except judgments solely as a result of medical expenses;

b. Current outstanding tax liens or other government liens and filings;

c. Foreclosures within the past three years;

d. A pattern of seriously delinquent accounts within the past three years;

(4) The applicant has completed the prelicensing education requirement described in sections 443.701 to 443.893;

(5) The applicant has passed a written test that meets the requirements described in sections 443.701 to 443.893;

(6) The applicant or the applicant's employer has met the Missouri surety bond requirement under sections 443.701 to 443.893.

443.717. 1. Mortgage loan originators shall satisfy a prelicensing education requirement through approved education courses of at least twenty hours approved in accordance with subsection 2 of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. For purposes of subsection 1 of this section, prelicensing approved education courses include courses reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

3. Nothing in this section shall preclude any prelicensing education course, as approved by the NMLSR, that is provided by the employer of the applicant or person who is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or person.

4. Prelicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

5. The prelicensing education requirements approved by the NMLSR in subdivisions (1) to (3) of subsection 1 of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in Missouri.

6. A person previously licensed under sections 443.701 to 443.893 applying to be licensed again shall prove that they have completed all of the continuing education requirements, if any, for the year in which the license was last held.

443.719. 1. In order to meet the written test requirement under sections 443.701 to 443.893, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards.

2. A written test shall not be treated as a qualified written test for purposes of subsection 1 of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination;

(4) Federal and state law and regulation on fraud, consumer protection, the nontraditional mortgage

marketplace, and fair lending issues.

3. Nothing in this section shall prohibit a test provider approved by the NMLSR from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any person with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

4. An applicant for licensure as a mortgage loan originator shall demonstrate minimum competence as follows:

(1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions;

(2) An individual may retake a test two times with each consecutive taking occurring at least thirty days after the preceding test;

(3) After failing three consecutive tests, an individual shall wait at least six months before taking the test again;

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

443.721. 1. Minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under sections 443.701 to 443.893;

(2) The mortgage loan originator has satisfied the annual continuing education requirements under sections 443.701 to 443.893;

(3) The mortgage loan originator has paid all required fees for renewal of the license and any other outstanding obligations to the division or the NMLSR.

2. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

443.723. 1. To meet the annual continuing education requirements referred to in sections 443.701 to 443.893, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection 2 of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. For purposes of subsection 1 of this section, continuing education courses shall be reviewed, and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

3. Nothing in this section shall preclude any education course, as approved by the NMLSR, that is

provided by the employer of the mortgage loan originator or person who is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or person.

4. Continuing education may be offered either in a classroom, online, or by any other means approved by the NMLSR.

5. A licensed mortgage loan originator:

(1) Shall only receive credit for a continuing education course in the year in which the course is taken except in the case of an expired license and under subsection 9 of this section; and

(2) Shall not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

7. A person having successfully completed the education requirements approved by the NMLSR in subdivisions (1) to (3) of subsection 1 of this section for any state shall be accepted as credit towards completion of continuing education requirements in Missouri.

8. A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

9. A person meeting the requirements of subdivisions (1) and (3) of subsection 2 of section 443.719 may make up any deficiency in continuing education as established by rule of the director.

443.725. In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the NMLSR. In order to carry out such requirement, the director is authorized to participate in the NMLSR. For this purpose, the director may establish by rule requirements as necessary, including but not limited to:

(1) Background checks for:

(a) Criminal history through fingerprint or other databases;

(b) Civil or administrative records;

(c) Credit history; or

(d) Any other information as deemed necessary by the NMLSR;

(2) The payment of fees to apply for or renew licenses through the NMLSR;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other such activities as the director deems necessary for participation in the NMLSR.

443.727. The director shall establish a process whereby mortgage loan originators may challenge information entered into the NMLSR by the director.

443.729. 1. In order to ensure the effective supervision and enforcement of sections 443.701 to 443.893, the director may, under chapter 536, RSMo:

(1) Deny, suspend, revoke, condition, or decline to renew a license for a violation of sections 443.701 to 443.893, rules issued under sections 443.701 to 443.893, or order or directive entered under sections 443.701 to 443.893;

(2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of sections 443.701 to 443.893, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to sections 443.701 to 443.893 for violations of sections 443.701 to 443.893;

(4) Impose fines on persons subject to sections 443.701 to 443.893 under subsections 2, 3, and 4 of this section;

(5) Issue orders or directives under sections 443.701 to 443.893 as follows:

(a) Order or direct persons subject to sections 443.701 to 443.893 to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(b) Order or direct persons subject to sections 443.701 to 443.893 to cease any harmful activities or violations of sections 443.701 to 443.893, including immediate temporary orders to cease and desist;

(c) Enter immediate temporary orders to cease business under a license or interim license issued under the authority granted under section 443.706 if the director determines that such license was erroneously granted or the licensee is currently in violation of any of the provisions of sections 443.701 to 443.893;

(d) Order or direct such other affirmative action as the director deems necessary.

2. Any letter issued by the director and declaring grounds for denying or declining to renew a license may be appealed to the board under chapter 536, RSMo. All other matters presenting a contested case involving a licensee may be heard by the director under chapter 536, RSMo.

3. The director may impose a civil penalty on a mortgage loan originator or person subject to sections 443.701 to 443.893, if the director finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to sections 443.701 to 443.893 has violated or failed to comply with any requirement of sections 443.701 to 443.893 or any regulation prescribed by the director under sections 443.701 to 443.893 or order issued under authority of sections 443.701 to 443.893.

4. The maximum amount of penalty for each act or omission described in subsection 3 of this section shall be twenty-five thousand dollars.

5. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

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

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

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

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

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

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

443.733. In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law and sections 361.070 and 361.080, RSMo, regarding the privacy or confidentiality of any information or material provided to the director and to the NMLSR by a licensee or by the director, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the NMLSR. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or by sections 361.070 and 361.080, RSMo;

(2) The director is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director;

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(4) Confidential supervisory information obtained under sections 443.701 to 443.893 shall be regarded as closed records under chapter 610, RSMo;

(5) This section shall not apply to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage loan originators or residential mortgage loan brokers that is included in the NMLSR for access by the public.

443.735. In addition to any authority allowed under sections 443.701 to 443.893, the director shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with sections 443.701 to 443.893, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(a) Criminal, civil, and administrative history information, including nonconviction data; and

(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act. No applicant would be denied a license solely on the basis of a credit score; and

(c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or

evidence;

(2) For the purposes of investigating violations or complaints arising under sections 443.701 to 443.893, or for the purposes of examination, the director may review, investigate, or examine any licensee, individual, or person subject to sections 443.701 to 443.893 as often as necessary to carry out the purposes of sections 443.701 to 443.893. The director may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents as the director deems relevant to the inquiry;

(3) Each licensee, individual, or person subject to sections 443.701 to 443.893 shall make available to the director, upon request, the books and records relating to the operations of such licensee, individual, or person subject to sections 443.701 to 443.893. The director shall have access to such books and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to sections 443.701 to 443.893 concerning their business;

(4) Each licensee, individual, or person subject to sections 443.701 to 443.893 shall make or compile reports or prepare other information as directed by the director to carry out the purposes of this section, including but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section;

(5) In making any examination or investigation authorized by sections 443.701 to 443.893, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation by the licensee or owner of the documents and records, the licensee or owner shall have access to the documents or records as necessary to conduct its ordinary business affairs;

(6) To carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to sections 443.701 to 443.893;

(d) Accept and rely on examination or investigation reports made by other government officials within or without this state; or

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to sections 443.701 to 443.893 in the course of that part of the examination covering the same

general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director;

(7) The authority of this section shall remain in effect whether such a licensee, individual, or person subject to sections 443.701 to 443.893 acts or claims to act under any licensing or registration law of this state or claims to act without such authority;

(8) No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

443.737. It is a violation of sections 443.701 to 443.893 for a person or individual subject to sections 443.701 to 443.893 to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to sections 443.701 to 443.893 may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by sections 443.701 to 443.893 without holding a valid license and employment as required under sections 443.701 to 443.893, or assist or aid and abet any person in the conduct of business under sections 443.701 to 443.893 without a valid license as required under sections 443.701 to 443.893;

(7) Fail to make disclosures as required by sections 443.701 to 443.893 and any other applicable state or federal law;

(8) Fail to comply with sections 443.701 to 443.893 or rules promulgated under sections 443.701 to 443.893, or fail to comply with any other state or federal law, including the rules applicable to any business authorized or conducted under sections 443.701 to 443.893;

(9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by sections 443.701 to 443.893;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

443.739. Each residential mortgage loan broker subject to the requirements of sections 443.701 to 443.893 shall submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require.

443.741. The director is required to report violations of sections 443.701 to 443.893, as well as enforcement actions and other relevant information, to the NMLSR subject to the provisions contained in section 443.731.

443.743. Nonfederally-insured credit unions which employ loan originators, as defined in Public Law 110-289, Title V, the S.A.F.E. Act, shall register such employees with the NMLSR by furnishing the information concerning the employees' identity set forth in Section 1507(a)(2) of Public Law 110-289, Title V.

443.745. The unique identifier of any person originating a residential mortgage loan and in the case of a mortgage loan originator, the residential mortgage loan broker license number or corresponding unique identifier of the mortgage loan broker, shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule or order of the director.

443.747. If any provision of sections 443.701 to 443.893 or their application to any person or circumstance is held invalid, the remainder of sections 443.701 to 443.893 or the application of the provision to other persons or circumstances is not affected. If the United States Department of Housing and Urban Development disapprove in writing to the director of any provision of sections 443.701 to 443.893 under authority granted to it under Section 1508 of Public Law 110-289, Title V, the S.A.F.E. Act, the director may, in accordance with the director's rule making authority under sections 443.701 to 443.893 and chapter 536, RSMo, adopt rules as necessary to participate or continue participation in the NMLSR.

443.805. 1. No person shall engage in the business of brokering, funding, [originating,] servicing or purchasing of residential mortgage loans without first obtaining a license as a residential mortgage loan broker from the director, pursuant to sections [443.800] 443.701 to 443.893 and the regulations promulgated thereunder. The licensing provisions of sections 443.805 to 443.812 shall not apply to any [entity] person engaged solely in commercial mortgage lending or to any person exempt as provided in section [443.803] 443.703 or pursuant to regulations promulgated as provided in sections [443.800] 443.701 to 443.893.

2. No person except a licensee or exempt [entity] person shall do any business under any name or title or circulate or use any advertising or make any representation or give any information to any person which indicates or reasonably implies activity within the scope of the provisions of sections [443.800] 443.701 to 443.893.

443.807. The director may, through the attorney general, request the circuit court in the appropriate jurisdiction to issue an injunction to restrain any person from violating, or continuing to violate, any provision of sections [443.805 to 443.812] 443.701 to 443.893.

443.809. The director shall have the authority, at any time and as often as reasonably necessary, to investigate or examine the books and records of any licensed person to assure compliance with sections [443.800] 443.701 to 443.893. The director shall have the right to examine under oath all persons whose testimony may be required relative to the business of any person being examined or investigated under sections [443.800] 443.701 to 443.893. The

director shall have free and immediate access to any licensed person's places of business and to all books and records related to the licensed business.

443.810. [Effective May 21, 1998,] Any person who violates any provision of sections 443.805 to 443.812 shall be deemed guilty of a class C felony. In addition, in any contested case proceeding, the director or board may assess a civil penalty of up to [five] **twenty-five** thousand dollars per violation for any violation of any of the provisions of sections [443.800] **443.701** to 443.893.

443.812. 1. Only one license shall be issued to each person conducting **the** activities [regulated by sections 443.800 to 443.893] **of a residential mortgage broker**. A [licensee] **residential mortgage broker** shall register with the director each office, place of business or location **in Missouri** where the [licensee] **residential mortgage loan broker** conducts any part of the [licensee's] **residential mortgage loan broker's** business pursuant to section 443.839.

2. [Licensees] **Residential mortgage loan brokers** may only solicit, broker, fund, originate, serve and purchase residential mortgage loans in conformance with sections [443.800] **443.701** to 443.893 and such rules as may be promulgated by the director [thereunder].

3. No residential mortgage loan broker shall permit an unlicensed individual to engage in the activities of a mortgage loan originator and no residential mortgage loan broker shall permit a mortgage loan originator to engage in the activities of a mortgage loan originator under the supervision of the residential mortgage loan broker until that mortgage loan originator is shown to be employed by the residential mortgage loan broker as provided in this section.

4. Each residential mortgage loan broker shall report and file a listing with the director showing each mortgage loan originator licensed in Missouri and employed under the supervision of the residential mortgage loan broker. The listing shall show the name and unique identifier of each mortgage loan originator. The listing shall be updated with changes and filed no later than the next business day. The director may authorize a system of reporting that shows mortgage loan originators employed by Missouri residential mortgage loan brokers via the NMLSR in substitution for the report and filing requirement under this subsection.

5. The director may grant waivers of residential mortgage loan broker licensing requirements for persons engaged primarily in servicing residential mortgage loans where such waiver shall benefit borrowers including in particular the requirement to maintain a full-service office in Missouri.

443.816. There is hereby created in the division of finance a "Residential Mortgage Board" which shall have such powers and duties as are now or hereafter conferred upon it by law. The board shall consist of five members who shall be appointed by the governor. The members of the board shall be residents of this state, and one of the members shall be a member of the Missouri Bar in good standing. Three members of the board shall be experienced in mortgage brokering and the remaining members of the board shall have no financial interest in any mortgage brokering business. Not more than three members of the board shall be members of the same political party. The term of office of each member shall be three years[, except for those first appointed. Two shall be appointed for terms of two years and one shall be appointed for a term of one year]. Members shall serve until their successors are duly appointed and have qualified. Each member shall serve for the remainder of the term for which the member was appointed. The board shall select one of the members as chairman and one of the members as secretary. Vacancies on the board shall be filled for the unexpired term in the same manner as in the case of an original appointment. The members of the board shall receive as compensation the sum of one hundred dollars per day while discharging their duties, and they shall be reimbursed for their actual and necessary expenses incurred in the performance of their

duties. A majority of the members of the board shall constitute a quorum and the decision of a majority of a quorum shall be the decision of the board. The board shall meet upon call of the chairman, or of the director, or of any two members of the board, and may meet at any place in this state. The board shall:

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

(2) Hear and determine any appeal from a denial [or revocation of a mortgage broker license or decision of the director pertaining to mortgage brokering] **of an application for or renewal of a license issued under sections 443.701 to 443.893. The board may employ, contract, or appoint hearing officers to hear appeals from applicants who have been denied a license or a license renewal by the director.**

443.817. Each member of the residential mortgage board shall file annually, no later than February first, with the Missouri ethics commission a statement of the member's current business transactions or other affiliations with any [licensee] **residential mortgage loan broker** under the provisions of sections [443.800] **443.701 to 443.893 or such report as the Missouri ethics commission otherwise directs.** The board may adopt any rules or regulations regarding the conduct of board members to avoid conflicts of interest on the part of the members of the residential mortgage board in connection with their positions on the board.

443.819. 1. No person engaged in a business regulated by sections [443.800] **443.701 to 443.893 shall operate or engage in** such business under a name other than the real names of the persons conducting such business, a corporate name adopted pursuant to [chapter 351, RSMo] **law**, or a fictitious name registered with the secretary of state's office.

2. Any person who knowingly violates this section shall be deemed guilty of a class A misdemeanor. A person who is convicted of a second or subsequent violation of this section shall be deemed of a class C felony.

443.821. The director shall issue a **residential mortgage loan broker** license upon completion of the following:

(1) The filing of an application;

(2) The filing with the director of a listing of judgments entered against, and bankruptcy petitions by, the applicant for the preceding seven years;

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

(4) An investigation of the averments required by section 443.827, which investigation must allow the director to issue positive findings stating that the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof, if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the scope of sections [443.800] **443.701 to 443.893.** If the director does not find the applicant's business and personal conduct warrants the issuance of a license, the director shall notify the applicant of the denial with the reasons stated for such denial. An applicant may appeal such denial to the board.

443.823. All **residential mortgage loan broker** licenses shall be issued in duplicate with one copy being transmitted to the license applicant and the second [being] retained [with] **by** the director. Upon receipt of such license, a residential mortgage [licensee] **loan broker** may engage in a business regulated by sections [443.800] **443.701 to 443.893.** Such license shall remain in full force and effect until it expires without renewal, is surrendered by the [licensee] **residential mortgage loan broker** or is revoked or suspended as provided in sections [443.800] **443.701 to 443.893.**

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

2. **The director may, by rule, revise and conform the residential mortgage loan broker license application and renewal process, and the licensing dates and periods under sections 443.701 to 443.893 to a system of licensing residential mortgage loan brokers administered in cooperation with the NMLSR.**

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

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

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

(3) Information **that would support findings under subdivision (4) of section 443.821** as to the character, fitness, financial and business responsibility, background, experience and criminal records of any:

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

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

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

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

443.827. Each application **for a residential mortgage loan broker license** shall be accompanied by an averment that the applicant:

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

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

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

(4) Will timely file any report required pursuant to sections [443.800] **443.701** to 443.893;

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

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

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

- (8) Has filed **state and federal** tax returns[, both state and federal,] for the past three years or filed a **statement** with the director [a personal, an accountant's or attorney's statement] as to why no return was filed;
- (9) Will not engage in any activities prohibited by section 443.863;
- (10) Will not knowingly misrepresent, circumvent or conceal any material particulars regarding a transaction to which the applicant is a party;
- (11) Will disburse funds in accordance with the applicant's agreements through a licensed and bonded disbursing agent or licensed real estate broker;
- (12) Has not committed any crime against the laws of this state, or any other state or of the United States, involving moral turpitude, fraudulent or dishonest dealings and that no final judgment has been entered against the applicant in a civil action [upon] **on** grounds of fraud, misrepresentation or deceit which has not been previously reported to the director;
- (13) Will account for and deliver to any person any [personal] property[, including, but not limited to, money, funds, deposits, checks, drafts, mortgages or any other thing of value, which has come into the applicant's possession and which is not the applicant's property or which the applicant is not in law or equity entitled to retain under the circumstances, at the time which has been] **as** agreed [upon] or [is] required by law, or, [in the absence of a fixed time,] upon demand of the person entitled to such accounting and delivery;
- (14) Has not engaged in any conduct which would be cause for denial of a license;
- (15) Has not become insolvent;
- (16) Has not submitted an application which contains a material misstatement;
- (17) Has not demonstrated negligence or incompetence in the performance of any activity required to hold a license under sections [443.800] **443.701** to 443.893;
- (18) Will advise the director in writing of any changes to the information submitted on the most recent application for license within forty-five days of such change. The written notice must be signed in the same form as the application for the license being amended;
- (19) Will comply with the provisions of sections [443.800] **443.701** to 443.893, or with any lawful order or rule made thereunder;
- (20) [When probable cause exists,] Will submit to periodic examinations by the director as required by sections [443.800] **443.701** to 443.893; [and]
- (21) Will advise the director in writing of any judgments entered against, and bankruptcy petitions by, the license applicant within five days of the occurrence of the judgment or petition; **and**
- (22) Will implement appropriate systems of supervision, management, and control to assure that each employee engaged in the activities of a mortgage loan originator does so in compliance with sections 443.701 to 443.893, and will promptly report any detected violations or apparent violations to the director within thirty days of detection.**

443.830. The director shall refuse to license or renew a **residential mortgage loan broker** license if:

- (1) [It is determined that] The applicant is not in compliance with any provision of sections [443.800] **443.701** to 443.893;
- (2) There is substantial continuity between the applicant and any violator of any provision of sections [443.800] **443.701** to 443.893; or

(3) The director cannot make the findings specified in section 443.821.

443.833. 1. **Residential mortgage loan broker** licenses shall be renewed on the first anniversary of the date of issuance and every two years thereafter **or as otherwise determined by the director to implement a system of licensing compatible with the NMLSR**. Renewal application forms and fees shall be submitted to the director at least sixty days before the renewal date.

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

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

(2) Such fee shall be assessed without prior notice to the [licensee] **residential mortgage loan broker**, but shall be assessed only in cases where the director possesses documentation of the [licensee's] **residential mortgage loan broker's** continuing activity for which the unexpired license was issued.

3. A license which is not renewed by the date required in this section shall automatically become inactive. No activity regulated by sections [443.800] **443.701** to 443.893 shall be conducted by the [licensee] **residential mortgage loan broker** when a license becomes inactive. An inactive license may be reactivated by filing a completed reactivation application with the director, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

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

443.835. A [licensee] **residential mortgage loan broker** ceasing an activity or activities regulated by sections [443.800] **443.701** to 443.893 and desiring to no longer be licensed shall so inform the director in writing and, at the same time, return the license and all other symbols or indicia of licensure to the director. The [licensee] **residential mortgage loan broker** shall include a plan for the withdrawal from a business regulated by sections [443.800] **443.701** to 443.893, including a timetable for the disposition of the business. Upon receipt of such written notice, the director shall issue a certified statement canceling the license.

443.839. 1. A [licensee] **residential mortgage loan broker** may apply for authority to open and maintain additional offices **in Missouri** by:

(1) Giving the director prior notice of the [licensee's] **residential mortgage loan broker's** intention in such form as prescribed by the director; **and**

(2) Paying a fee to be established by the director [by administrative rule].

2. [Upon] **On** receipt of the notice and fee [required by subsection 1 of this section], the director shall issue a certificate for the additional office. The certificate shall be conspicuously displayed in the respective [additional] office.

443.841. The **appropriate residential mortgage loan broker license or certificate** shall be conspicuously displayed in every Missouri office. [The license shall state the full name and address of the licensee.] The license **or certificate** shall not be transferable or assignable. [A separate certificate shall be issued for display in each Missouri office.]

443.843. 1. The expenses of administering sections [443.800] **443.701** to 443.893, including investigations and

examinations [provided for in sections 443.800 to 443.893] shall be borne by and assessed against [entities] **persons** regulated by sections [443.800] **443.701** to 443.893. The director shall establish fees by regulation **or rule** in at least the following categories:

- (1) Application fees;
- (2) Investigation of license applicant fees;
- (3) Examination fees;
- (4) Contingent fees; [and]
- (5) **Fees collected by the NMLSR or paid by a licensee, to the NMLSR; and**
- (6) Such other categories as may be required to administer sections [443.800] **443.701** to 443.893.

2. In addition to any fees collected pursuant to sections [443.800] **443.701** to 443.893, the director shall [by rules and regulations] establish schedules [to apply to the assessment and collection] of [any necessary contingent or miscellaneous] fees. Any fees established pursuant to the authority of sections [443.800] **443.701** to 443.893 shall [be set at an amount to] produce revenue [which will not] **that does not** substantially exceed the cost of administering sections [443.800] **443.701** to 443.893.

443.845. 1. There is hereby created in the state treasury the "Residential Mortgage Licensing Fund" which shall be used, upon appropriation by the general assembly, for all costs incurred by the director in administering the provisions of sections [443.800] **443.701** to 443.893. The director shall transmit all fees received **by the director** pursuant to sections [443.800] **443.701** to 443.893 to the director of revenue for deposit in an interest-bearing account in the state treasury to the credit of the residential mortgage licensing fund. Any interest earned on the money in this fund shall be credited to the residential mortgage licensing fund.

2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriations from the residential mortgage licensing fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the residential mortgage licensing fund for the preceding fiscal years.

443.849. [A corporate surety bond in the principal sum of twenty thousand dollars shall accompany each application for a license. The bond shall be in a form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant in connection with the activities of originating, servicing or acquiring mortgage loans. An applicant or licensee may, in lieu of filing the bond required pursuant to this section, provide the director with a twenty thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial institution.] **1. Residential mortgage loan brokers shall deliver a surety bond to the director prior to the issuance or renewal of a license:**

- (1) **The surety bond shall provide coverage in an amount as prescribed in subsection 2 of this section;**
- (2) **The surety bond shall be in a form as prescribed by the director;**
- (3) **Such bond shall be issued by a bonding or insurance company authorized to do business in Missouri and shall secure the faithful performance of the applicant, its employees or agents, including mortgage loan originators, in connection with the activities of originating, servicing, or acquiring mortgage loans;**
- (4) **The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of sections 443.701 to 443.893.**

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

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

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

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

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

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

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

(1) Advertising [for loans transacted] pursuant to [the requirements of] sections [443.800] **443.701** to 443.893 may not be false, misleading or deceptive. No person whose activities are regulated pursuant to the provisions of sections [443.800] **443.701** to 443.893 may advertise in any manner so as to indicate or imply that the person's interest rates or charges for loans are in any way recommended, approved, set or established by the state or **federal government** or by the provisions of sections [443.800] **443.701** to 443.893;

(2) All advertisements by a licensee shall contain the name and an office address of such [entity] **person**, which shall conform to a name and address on record with the director.

443.857. Each [licensee] **residential mortgage loan broker** shall maintain, in the state of Missouri, at least one full-service office with staff reasonably adequate to efficiently handle all matters relating to any proposed or existing home mortgage with respect to which such [licensee] **residential mortgage loan broker** is performing services; **except that this provision may be waived by the director for persons providing mortgage loan servicing under section 443.812.**

443.861. Whenever the [serving] **servicing** of a residential mortgage is transferred or sold by a [licensee] **residential mortgage loan broker**, notice shall be given to the mortgagor simultaneously with such transfer and shall include, at the minimum, where and to whom to address the mortgagor's questions relating to the residential mortgage, the exact name, address and telephone number to whom at least the next three months' payments are to be submitted and the total amount required of the mortgagor by the servicer for each of the months referred to in the notice.

443.863. It is unlawful discrimination to refuse loans or to vary the terms of loans or the application procedures for loans because of:

(1) The borrower's race, color, religion, national origin, age, gender or marital status; or

(2) The [geographic] location of the proposed security.

443.865. The director may promulgate rules with respect to placement in escrow accounts by any [licensee] **residential mortgage loan broker** of any money, funds, deposits, checks or drafts entrusted to the [licensee by any person dealing with the licensee as a residential mortgage licensee] **residential mortgage loan broker**.

443.867. 1. [At the time of application,] Each residential mortgage [licensee which is a] **loan broker** shall disclose, within [the] a loan brokerage disclosure statement[, that] **and fee agreement with each borrower**:

- (1) **Whether** the licensee [does not make] **makes** loans; and
- (2) **Whether** the funds [are] **may be** provided by another person which may affect availability of funds.

2. **The mortgage loan brokerage disclosure statement and fee agreement shall disclose the amount and sources of the residential mortgage loan broker's fees and all other compensation related to obtaining a residential mortgage loan on behalf of the borrower.**

3. **The loan origination fee or other compensation of a residential mortgage loan broker shall not be limited under state law so long as the mortgage loan brokerage disclosure statement and fee agreement is fully compliant with this section and federal law.**

4. **A mortgage loan originator shall be compensated exclusively by the residential mortgage loan broker employing the mortgage loan originator. A mortgage loan originator shall not obtain compensation directly from any lender or borrower or any other person providing real estate settlement services.**

5. **In the event the mortgage loan brokerage disclosure statement and fee agreement is not fully compliant with this section or in the event the mortgage loan broker obtains fees and compensation in excess of the amount disclosed, the mortgage loan broker shall forfeit double the amount of fees and compensation obtained to the borrower.**

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

- (1) To issue or refuse to issue any license as provided in sections [443.800] **443.701** to 443.893;
- (2) To revoke or suspend for cause any license issued pursuant to sections [443.800] **443.701** to 443.893;
- (3) To keep records of all licenses issued pursuant to sections [443.800] **443.701** to 443.893;
- (4) To receive, consider, investigate and act upon complaints made by any person in connection with any residential mortgage [licensee] **loan broker or mortgage loan originator** in this state;
- (5) To consider and act upon any recommendations from the residential mortgage board;
- (6) To prescribe the forms [of] **for** and receive:
 - (a) Applications for licenses; and
 - (b) All reports and all books and records required to be made by any residential mortgage [licensee] **loan broker** pursuant to the provisions of sections [443.800] **443.701** to 443.893, including annual audited financial statements;
- (7) To adopt rules necessary and proper for the administration of sections [443.800] **443.701** to 443.893;
- (8) To subpoena documents and witnesses and compel their attendance and production, to administer oaths and to require the production of any books, papers or other material relevant to any inquiry authorized by sections [443.800] **443.701** to 443.893;
- (9) To require information with regard to any applicant as the director may deem desirable, with due regard to the paramount interests of the public, about the experience, background, honesty, truthfulness, integrity and competency of the applicant concerning financial transactions involving primary or subordinate mortgage financing and where the applicant is [an entity] **a person** other than an individual, as to the honesty, truthfulness, integrity and competency of any officer or director of the corporation, association or other [entity] **person** or the members of a partnership;

(10) To examine the books and records of every [licensee] **residential mortgage loan broker** at intervals as provided by sections [443.800] **443.701** to 443.893 and the rules promulgated thereunder;

(11) To enforce the provisions of sections [443.800] **443.701** to 443.893;

(12) To levy fees and charges for services performed in administering the provisions of sections [443.800] **443.701** to 443.893. The aggregate of all fees collected by the director shall be deposited promptly after receipt and accompanied by a detailed statement of such receipts in the residential mortgage licensing fund; **provided that fees may also be collected under the requirements of the NMLSR;**

(13) To appoint a staff which may include an executive director, examiners, supervisors, experts, special assistants and any necessary support staff as needed to effectively and efficiently administer the provisions of sections [443.800] **443.701** to 443.893; [and]

(14) To conduct hearings for such purposes as the director deems appropriate; **and**

(15) To enter into agreements or contracts with authorized representatives of the NMLSR as appropriate to implement the NMLSR in Missouri.

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

443.879. 1. In addition to any reports required pursuant to sections [443.800] **443.701** to 443.893, every licensee shall file such other reports as the director shall request.

2. Any [licensee] **residential mortgage loan broker** or any officer, director, employee or agent of any [licensee] **residential mortgage loan broker** who fails to file any reports required by sections [443.800] **443.701** to 443.893 or who shall deliberately, willfully or knowingly make, subscribe to or cause to be made any false entry with intent to deceive the director or the director's appointees or who shall purposely cause delay in filing such reports shall be deemed guilty of a class A misdemeanor.

443.881. 1. Upon written notice to a licensee, the director may suspend or revoke any license issued pursuant to sections [443.800] **443.701** to 443.893 if the director makes a finding of one or more of the following in the notice that:

(1) Through separate acts or an act or a course of conduct, the licensee has violated any provision of sections [443.800] **443.701** to 443.893, any rule promulgated by the director or any other law or rule of this state or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license would have warranted the director in refusing originally to issue such license;

(3) If a licensee is other than an individual, any ultimate equitable owner, officer, director or member of the licensed partnership, association, corporation or other [entity] **person** has so acted or failed to act as would be cause for suspending or revoking a license to that party as an individual.

2. No license shall be suspended or revoked, except as provided in this section, nor shall any licensee be subject to any other disciplinary proceeding without notice of the licensee's right to a hearing as provided in sections [443.800] **443.701** to 443.893.

3. The director, on good cause shown that an emergency exists, may suspend any license for a period not to exceed thirty days, pending an investigation.

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

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

6. Every license issued pursuant to sections [443.800] **443.701** to 443.893 shall remain in force and effect until the license has expired without renewal, has been surrendered, revoked or suspended in accordance with the provisions of sections [443.800] **443.701** to 443.893, except that, the director may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if no fact or condition exists which would have warranted the director to refuse originally to issue such license pursuant to sections [443.800] **443.701** to 443.893.

7. Whenever the director revokes or suspends a license issued pursuant to sections [443.800] **443.701** to 443.893, the director shall [execute in duplicate a written order to that effect. The director shall publish notice of such order in a newspaper of general circulation in the county in which the residential mortgage licensee's business is located] **post public notice of such order** and shall serve a copy of such order upon the licensee. Such order may be reviewed by the board.

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

(1) Revocation of the license;

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

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

(4) Issuance of a reprimand; and

(5) Denial of a license.

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

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

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

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

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

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

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

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

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

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

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

(11) Failure to comply with any order of the director or rule made or issued pursuant to the provisions of sections [443.800] **443.701** to 443.893;

(12) Engaging in activities regulated by sections [443.800] **443.701** to 443.893 without a current, active license unless specifically exempted by the provisions of sections [443.800] **443.701** to 443.893;

(13) Failure to pay timely any fee or charge due under the provisions of sections [443.800] **443.701** to 443.893;

(14) Failure to maintain, preserve and keep available for examination, all books, accounts or other documents required by the provisions of sections [443.800] **443.701** to 443.893 and the rules of the director;

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

(16) A pattern of substantially underestimating closing costs;

(17) Failure to comply with, or any violation of, any provision of sections [443.800] **443.701** to 443.893.

10. A licensee shall be subject to the disciplinary actions specified in sections [443.800] **443.701** to 443.893 for a violation of subsection 9 of this section by any officer, director, **member**, shareholder, joint venture, partner, ultimate equitable owner or employee of the licensee.

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

12. The procedures for the surrender, **suspension, or revocation** of a license shall be:

(1) The director may, after ten days' notice by certified mail to the licensee at the address set forth on the license, **or in the case of a mortgage loan originator, the principal office of the residential mortgage loan broker employing or last employing the originator**, stating the contemplated action and, in general, the grounds for such action and the date, time and place of a hearing on the action, and after providing the licensee with a reasonable opportunity to be heard prior to such action, revoke or suspend any license issued pursuant to sections [443.800] **443.701** to 443.893 if the director finds that:

(a) The licensee has failed to comply with any provision of sections [443.800] **443.701** to 443.893 or any order, decision, finding, rule or direction of the director lawfully made pursuant to the authority of sections [443.800] **443.701** to 443.893; or

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

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

443.883. The director shall at all times maintain staff and facilities adequate to receive, record and investigate complaints and inquiries made by any person concerning sections [443.800] **443.701** to 443.893 and any licensees licensed pursuant to the provisions of sections [443.800] **443.701** to 443.893. Each licensee shall open the licensee's

books, records, documents and offices wherever situated to the director or the director's appointees as needed to facilitate such investigations.

443.885. On or before March first of each year, each [licensee] **residential mortgage loan broker**, except [those] exempt [entities provided for in subsection 8 of section 443.803,] **persons** shall file a report with the director which shall disclose the following information with respect to the immediately preceding calendar year:

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

- (a) Conventional mortgage loans;
- (b) Mortgage loans insured under the National Housing Act, 12 U.S.C. 1701, et seq.; and
- (c) Mortgage loans guaranteed under the provisions of the Federal Veterans' Benefits Act, 38 U.S.C. 3710 et seq.;

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

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

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

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

(4) The director may also require by rule that licensees report such additional information as is necessary to assure [strict] compliance with the provisions of sections [443.800] **443.701** to 443.893.

443.887. 1. In addition to such other powers as may be prescribed by sections [443.800] **443.701** to 443.893, the director may promulgate rules consistent with the purpose of sections [443.800] **443.701** to 443.893, including, but not limited to:

(1) Such rules in connection with the activities of licensees as may be necessary and appropriate for the protection of consumers in this state;

(2) Such rules as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of licensees;

(3) Such rules as may define the terms used in sections [443.800] **443.701** to 443.893 and as may be necessary and appropriate to interpret and implement the provisions of sections [443.800] **443.701** to 443.893; and

(4) Such rules as may be necessary for the enforcement of sections [443.800] **443.701** to 443.893.

2. The director may make such specific ruling, demands and findings as the director may deem necessary for the proper conduct of the mortgage lending industry.

443.889. Unless exempt from licensure pursuant to the provisions of sections [443.800] **443.701** to 443.893, no person engaged in, or offering to engage in, any act or service for which a license is required pursuant to the provisions of sections [443.800] **443.701** to 443.893 may bring or maintain any action in any court of this state to collect compensation for the performance of the licensable services without alleging and proving that the person was

the holder of a valid residential mortgage license issued pursuant to the provisions of sections [443.800] **443.701** to 443.893 at all times during the performance of such services.

443.891. 1. Upon making any one or more of the following preliminary findings, the director may issue a notice of charges **against a licensee** in support of an order **imposing a fine, requiring restitution or forfeiture, suspending or revoking a license, or 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] **person** or in the affairs [of one or more] **any** licensees under sections [443.800] **443.701** to 443.893, or in the affairs of any [financial] **depository** 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] **twenty-five** thousand dollars per occurrence. The findings required by this section may be any one or more of the following:

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

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

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

(4) A finding that the person subject to the order has violated any provision of sections 443.701 to 443.893.

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

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

443.893. When the director makes a finding that a receivership or conservatorship is necessary to protect consumers of a licensee from the consequences of the licensee's failure to comply with the provisions of sections [443.800] **443.701** to 443.893 or other unsafe and unsound practice, the director shall request the attorney general of this state to petition the circuit court of Cole County or of the county in which the licensee is located to appoint a receiver or conservator for purposes of protecting consumers and resolving the affairs of the licensee.

[443.800. Sections 443.800 to 443.893 shall be known and may be cited as the "Residential Mortgage Brokers License Act".]

[443.803. 1. For the purposes of sections 443.800 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 entity that directly controls, or is controlled by, the licensee and any other company that is directly affecting activities regulated by sections 443.800 to 443.893 that is controlled by the company that controls the licensee;

(b) Any entity:

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

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

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

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

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

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

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

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

(8) "Exempt entity", the following entities:

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

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

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

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

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

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

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

(h) Any mortgage banker as defined in subdivision (19) of this subsection; or

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

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

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

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

- (m) Any person who originates, services or brokers residential mortgagee loans and who receives no compensation for those activities, subject to the director's regulations regarding the nature and amount of compensation;
- (9) "Financial institution", a savings and loan association, savings bank, credit union, mortgage banker or bank organized under the laws of Missouri or the laws of the United States with its principal place of business in Missouri;
- (10) "First-tier subsidiary", as defined by administrative rule promulgated by the director;
- (11) "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 licensee is brokering, funding, originating, purchasing or servicing. The management and operation of each full-service office must 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 regulations with regard to the requirements of this subdivision and shall include an evaluation of compliance with this subdivision in the periodic examination of the licensee;
- (12) "Government-insured mortgage loan", any mortgage loan made on the security of residential real estate insured by the Department of Housing and Urban Development or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;
- (13) "Lender", any person who either lends money for or invests money in residential mortgage loans;
- (14) "Licensee" or "residential mortgage licensee", a person who is licensed to engage in the activities regulated by sections 443.800 to 443.893;
- (15) "Loan broker" or "broker", a person exempted from licensing pursuant to subdivision (8) of this subsection, who performs the activities described in subdivisions (17) and (32) of this subsection;
- (16) "Loan brokerage agreement", a written agreement in which a 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;
- (17) "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 loan secured by residential real estate situated in Missouri or assisting an investor or a borrower in obtaining a loan secured by residential real estate in return for consideration;
- (18) "Making a residential mortgage loan" or "funding a residential mortgage loan", for compensation or gain, either, directly or indirectly, advancing funds or making a commitment to an applicant for a residential mortgage loan;
- (19) "Mortgage banker", a mortgage loan company which is subject to licensing, supervision, or annual audit requirements by the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States Veterans Administration (VA), or the United States Department of Housing and Urban Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved lender, loan correspondent, seller, or servicer;
- (20) "Mortgage loan" or "residential mortgage loan", a loan to, or for the benefit of, any natural person made primarily for personal, family or household use, including a reverse mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real property or certificates of stock or other evidence of ownership interests in, and proprietary leases from, corporations or partnerships formed for the purpose of cooperative ownership of residential real property;
- (21) "Net worth", as provided in section 443.859;
- (22) "Originating", the advertising, soliciting, taking applications, processing, closing, or issuing of commitments for, and funding of, residential mortgage loans;
- (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", any individual, firm, partnership, corporation, company or association and the legal successors thereof;
- (26) "Personal residence address", a street address, but shall not include a post office box number;
- (27) "Purchasing", the purchase of conventional or government-insured mortgage loans secured by residential real estate from either the lender or from the secondary market;
- (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 commitment", a written conditional agreement to finance a residential mortgage loan;
- (31) "Residential real property" or "residential real estate", real property located in this state improved by a one-family to four-family dwelling;
- (32) "Servicing", the collection or remittance for, or the right or obligation to collect or remit for, any lender, noteowner, noteholder or for a licensee'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;
- (33) "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;
- (34) "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.

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

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

- (1) An application for a residential mortgage license in Missouri;
- (2) An addendum requesting waiver of the fee stating the grounds in support of such waiver, including, but not limited to, not-for-profit status, or the showing of undue hardship; and
- (3) In the case of out-of-state servicer of loans in Missouri, the following documentation shall be required:
 - (a) A verification that the firm services only twenty-five or fewer loans secured by residential real estate situated in Missouri; except that, any out-of-state servicer located in the metropolitan area of the city of St. Louis and any city with at least three hundred fifty thousand inhabitants which is located in more than one county may service more than twenty-five loans provided that such servicer meets all the requirements for licensing provided for businesses located in Missouri, except the provision for a full-service office located in Missouri;
 - (b) An agreement not to originate, purchase or acquire additional servicing of loans secured by residential real estate situated in Missouri;
 - (c) An agreement to maintain a dedicated toll-free telephone number for the exclusive use by the licensee's Missouri customers;
 - (d) An agreement to provide a written notice, at least annually, to the licensee's Missouri customers

advising them of the dedicated toll-free telephone number and to furnish the director with a copy of such written notice.

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

[443.847. No rule or portion of a rule promulgated under the authority of sections 443.800 to 443.893 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

[443.851. 1. At the end of the licensee's fiscal year, but in no case more than twelve months after the last audit conducted pursuant to this section and section 443.853, each licensee shall cause the licensee's books and accounts to be audited by a certified public accountant not connected with such licensee. The books and records of all licensees shall be maintained on an accrual basis. The audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements in the report and must be performed in accordance with generally accepted accounting principles and generally accepted auditing standards.

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

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

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

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

5. As an alternative to the audit requirements of subsections 1 to 4 of this section, a licensee may meet the requirements of this section without filing an audit report by posting and maintaining a corporate surety bond, in addition to that described in section 443.849, in the amount of one hundred thousand dollars. The bond shall be in form specified by and satisfactory to the director and payable to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the licensee, its agents and subagents in connection with the activities of originating, servicing or acquiring mortgage loans. A licensee may, in lieu of this bond, provide the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section 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, the director shall cause the audit to be made by a certified public accountant at the licensee's expense. The director shall select such certified public accountant by advertising for bids or by such other fair and impartial means as the director establishes by regulation.

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

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

[443.859. Effective May 21, 1998, every licensee shall have and maintain a net worth of not less than twenty-five thousand dollars. The director may promulgate rules with respect to net worth definitions and requirements for licensees as necessary to accomplish the purposes of sections

443.800 to 443.893. In lieu of the net worth requirement established by this section, the director may accept evidence of conformance by the licensee with the net worth requirements of the United States Department of Housing and Urban Development.]

Section B. Because of the need to implement Section 1508 of Public Law 110-289, Title V, the S.A.F.E. Act and the need to establish a level playing field in Missouri to support residential mortgage originations to benefit Missouri citizens and the Missouri economy, particularly in securing housing and in promoting the housing market, the provisions of section A of this act are deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and are hereby declared to be an emergency within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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