

SECOND REGULAR SESSION

HOUSE BILL NO. 1950

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHEVE, WHORTON, DAVIS (Co-sponsors), SMITH, RIZZO,
HOSMER, LIESE, LUETKENHAUS AND GRATZ.

Read 1st time February 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4463L.011

AN ACT

To repeal sections 443.803, 443.816, 443.821, 443.833, 443.859, and 443.885, RSMo, and to enact in lieu thereof six new sections relating to residential mortgage brokers.

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

Section A. Sections 443.803, 443.816, 443.821, 443.833, 443.859, and 443.885, RSMo,
2 are repealed and six new sections enacted in lieu thereof, to be known as sections 443.803,
3 443.816, 443.821, 443.833, 443.859, and 443.885, to read as follows:

443.803. 1. For the purposes of sections 443.800 to 443.893, the following terms mean:

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

4 (2) "Affiliate":

5 (a) Any entity that directly controls, or is controlled by, the licensee and any other
6 company that is directly affecting activities regulated by sections 443.800 to 443.893 that is
7 controlled by the company that controls the licensee;

8 (b) Any entity:

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

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

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

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

20 (5) "Borrower", the person or persons who use the services of a [loan] **mortgage** broker,
21 originator or lender;

22 (6) **"Continuing education" or "certified course of continuing education", a course**
23 **of continuing education relating to mortgage brokering consisting of twenty-four hours**
24 **every two years of classroom study which is:**

25 (a) **Certified by the National Association of Mortgage Brokers, the Mortgage**
26 **Bankers Association of America or any successor entities; or**

27 (b) **Certified in a manner established by the director if the National Association of**
28 **Mortgage Brokers, the Mortgage Bankers Association of America, or any successor entities**
29 **cease to exist.**

30 [(6)] (7) "Director", the director of the division of finance within the department of
31 economic development;

32 (8) **"Employee", an individual for whom a mortgage broker, in addition to**
33 **providing a wage or salary, pays Social Security and unemployment taxes, provides**
34 **workers' compensation coverage, and withholds local, state, and federal income taxes.**
35 **Employee also includes any new shareholder, member, or partner of a licensee who acts**
36 **as a loan originator or loan officer of the licensee, but for whom the registrant is prevented**
37 **by law from making income tax withholdings.**

38 [(7)] (9) "Escrow agent", a third party, individual or entity, charged with the fiduciary
39 obligation for holding escrow funds on a residential mortgage loan pending final payout of those
40 funds in accordance with the terms of the residential mortgage loan;

41 [(8)] (10) "Exempt entity", the following entities:

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

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

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

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

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

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

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

60 (h) Any mortgage banker as defined in subdivision [(19)] **(20)** of this subsection; or

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

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

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

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

74 [(m)] **(l)** Any person who originates, services or brokers residential mortgagee loans and
75 who receives no compensation for those activities, subject to the director's regulations regarding
76 the nature and amount of compensation;

77 [(9)] **(11)** "Financial institution", a savings and loan association, savings bank, credit
78 union, mortgage banker or bank organized under the laws of Missouri or the laws of the United
79 States with its principal place of business in Missouri;

80 [(10)] **(12)** "First-tier subsidiary", as defined by administrative rule promulgated by the
81 director;

82 [(11)] **(13)** "Full-service office", office and staff in Missouri reasonably adequate to
83 handle efficiently communications, questions and other matters relating to any application for
84 a new, or existing, home mortgage loan which the licensee is brokering, funding, originating,
85 purchasing or servicing. The management and operation of each full-service office must include
86 observance of good business practices such as adequate, organized and accurate books and
87 records, ample phone lines, hours of business, staff training and supervision and provision for

88 a mechanism to resolve consumer inquiries, complaints and problems. The director shall
89 promulgate regulations with regard to the requirements of this subdivision and shall include an
90 evaluation of compliance with this subdivision in the periodic examination of the licensee;

91 [(12)] **(14)** "Government-insured mortgage loan", any mortgage loan made on the
92 security of residential real estate insured by the Department of Housing and Urban Development
93 or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;

94 [(13)] **(15)** "Lender", any person who either lends money for or invests money in
95 residential mortgage loans;

96 [(14)] **(16)** "Licensee" or "residential mortgage licensee", a person who is licensed to
97 engage in the activities regulated by sections 443.800 to 443.893;

98 **(17) "Loan originator" or "loan officer", an employee of a mortgage broker who**
99 **originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges**
100 **including an employee who solicits financial and mortgage information from the public for**
101 **sale to another mortgage broker. The loan originator or loan officer shall be licensed**
102 **according to section 443.805 and that license shall be held by the employing mortgage**
103 **broker;**

104 [(15)] "Loan broker" or "broker", a person exempted from licensing pursuant to
105 subdivision (8) of this subsection, who performs the activities described in subdivisions (17) and
106 (32) of this subsection;

107 [(16)] **(18)** "Loan brokerage agreement", a written agreement in which a broker agrees
108 to do either of the following:

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

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

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

116 [(18)] **(19)** "Making a residential mortgage loan" or "funding a residential mortgage loan",
117 for compensation or gain, either, directly or indirectly, advancing funds or making a commitment
118 to an applicant for a residential mortgage loan;

119 [(19)] **(20)** "Mortgage banker", a mortgage loan company which is subject to licensing,
120 supervision, or annual audit requirements by the Federal National Mortgage Association
121 (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), [or the United States
122 Veterans Administration (VA), or the United States Department of Housing and Urban
123 Development (HUD),] or a successor of any of the foregoing agencies or entities, as an approved

124 lender, [loan correspondent,] seller, or servicer;

125 **(21) "Mortgage broker" or "broker", a person licensed pursuant to this chapter**
126 **who performs mortgage brokering or mortgage brokerage services as defined in this**
127 **subsection;**

128 **(22) "Mortgage brokering" or "mortgage brokerage service", the act of helping to**
129 **obtain for an investor or from an investor for a borrower, a loan secured by residential real**
130 **estate situated in Missouri or assisting an investor or a borrower in obtaining a loan**
131 **secured by residential real estate in return for consideration;**

132 [(20)] **(23) "Mortgage loan" or "residential mortgage loan", a loan to, or for the benefit**
133 **of, any natural person made primarily for personal, family or household use, including a reverse**
134 **mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real**
135 **property or certificates of stock or other evidence of ownership interests in, and proprietary**
136 **leases from, corporations or partnerships formed for the purpose of cooperative ownership of**
137 **residential real property;**

138 [(21)] **(24) "Net worth", as provided in section 443.859;**

139 [(22)] **(25) "Originate" or "originating", the advertising, soliciting, taking applications,**
140 **processing, closing, or issuing of commitments for, and funding of, residential mortgage loans;**

141 [(23)] **(26) "Party to a residential mortgage financing transaction", a borrower, lender or**
142 **[loan] broker in a residential mortgage financing transaction;**

143 [(24)] **(27) "Payments", payment of all, or any part of, the following: principal, interest**
144 **and escrow reserves for taxes, insurance and other related reserves and reimbursement for lender**
145 **advances;**

146 [(25)] **(28) "Person", any individual, firm, partnership, corporation, company or**
147 **association and the legal successors thereof;**

148 [(26)] **(29) "Personal residence address", a street address, but shall not include a post**
149 **office box number;**

150 [(27)] **(30) "Purchasing", the purchase of conventional or government-insured mortgage**
151 **loans secured by residential real estate from either the lender or from the secondary market;**

152 [(28)] **(31) "Residential mortgage board", the residential mortgage board created in**
153 **section 443.816;**

154 [(29)] **(32) "Residential mortgage financing transaction", the negotiation, acquisition,**
155 **sale or arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential**
156 **mortgage loan or residential mortgage loan commitment;**

157 **(33) "Residential mortgage license certification course", a course of study**
158 **consisting of sixty hours of education relating to mortgage brokering followed by a one**
159 **hundred question examination. The sixty hours shall consist of twenty hours of core study**

160 **and forty hours of elective study.**

161 [(30)] **(34)** "Residential mortgage loan commitment", a written conditional agreement
162 to finance a residential mortgage loan;

163 [(31)] **(35)** "Residential real property" or "residential real estate", real property located
164 in this state improved by a one-family to four-family dwelling;

165 [(32)] **(36)** "Servicing", the collection or remittance for, or the right or obligation to
166 collect or remit for, any lender, noteowner, noteholder or for a licensee's own account, of
167 payments, interests, principal and trust items such as hazard insurance and taxes on a residential
168 mortgage loan and includes loan payment follow-up, delinquency loan follow-up, loan analysis
169 and any notifications to the borrower that are necessary to enable the borrower to keep the loan
170 current and in good standing;

171 [(33)] **(37)** "Soliciting, processing, placing or negotiating a residential mortgage loan",
172 for compensation or gain, either, directly or indirectly, accepting or offering to accept an
173 application for a residential mortgage loan, assisting or offering to assist in the processing of an
174 application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to
175 negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a
176 borrower including, but not limited to, the submission of credit packages for the approval of
177 lenders, the preparation of residential mortgage loan closing documents, and including a closing
178 in the name of a broker;

179 [(34)] **(38)** "Ultimate equitable owner", a person who, directly or indirectly, owns or
180 controls an ownership interest in a corporation, foreign corporation, alien business organization,
181 trust or any other form of business organization regardless of whether the person owns or
182 controls the ownership interest through one or more persons or one or more proxies, powers of
183 attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or
184 other entities or devices, or any combination thereof.

185 2. The director may define by rule any terms used in sections 443.800 to 443.893 for
186 efficient and clear administration. **Any rule or portion of a rule, as that term is defined in**
187 **section 536.010, RSMo, that is created under the authority delegated in this section shall**
188 **become effective only if it complies with and is subject to all of the provisions of chapter**
189 **536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,**
190 **RSMo, are nonseverable and if any of the powers vested with the general assembly**
191 **pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and**
192 **annul a rule are subsequently held unconstitutional, then the grant of rulemaking**
193 **authority and any rule proposed or adopted after August 28, 2002, shall be invalid and**
194 **void.**

443.816. There is hereby created in the division of finance a "Residential Mortgage

2 Board" which shall have such powers and duties as are now or hereafter conferred upon it by
3 law. The board shall consist of five members who shall be appointed by the governor. The
4 members of the board shall be residents of this state, and one of the members shall be a member
5 of the Missouri Bar in good standing. Three members of the board shall be experienced in
6 mortgage brokering and the remaining members of the board shall have no financial interest in
7 any mortgage brokering business. Not more than three members of the board shall be members
8 of the same political party. The term of office of each member shall be three years, except for
9 those first appointed. Two shall be appointed for terms of two years and one shall be appointed
10 for a term of one year. Members shall serve until their successors are duly appointed and have
11 qualified. Each member shall serve for the remainder of the term for which the member was
12 appointed. The board shall select one of the members as chairman and one of the members as
13 secretary. **The president of the Missouri Association of Mortgage Professionals in office at**
14 **the time shall, at least ninety days prior to the expiration of the term of a board member**
15 **experienced in mortgage brokering, or as soon as feasible after a vacancy on the board**
16 **otherwise occurs, submit to the director a list of five persons experienced in mortgage**
17 **brokering and willing to fill the vacancy in question, with the request and recommendation**
18 **that the governor appoint one of the five persons so listed, and with the list so submitted,**
19 **the president of the Missouri Association of Mortgage Professionals shall include in his or**
20 **her letter of submittal a description of the method by which the names were chosen by the**
21 **association.** Vacancies on the board shall be filled for the unexpired term in the same manner
22 as in the case of an original appointment. The members of the board shall receive as
23 compensation the sum of one hundred dollars per day while discharging their duties, and they
24 shall be reimbursed for their actual and necessary expenses incurred in the performance of their
25 duties. A majority of the members of the board shall constitute a quorum and the decision of a
26 majority of a quorum shall be the decision of the board. The board shall meet upon call of the
27 chairman, or of the director, or of any two members of the board, and may meet at any place in
28 this state. The board shall:

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

31 (2) Hear and determine any appeal from a denial or revocation of a mortgage broker
32 license or decision of the director pertaining to mortgage brokering.

443.821. The director shall issue a license upon completion of the following:

2 (1) The filing of an application; **after January 1, 2003, each applicant shall be**
3 **required to include proof of satisfactory completion, within six months prior to the date**
4 **of application of the residential mortgage license certification course and examination as**
5 **defined in section 443.803;**

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

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

10 (4) An investigation of the averments required by section 443.827, which investigation
11 must allow the director to issue positive findings stating that the financial responsibility,
12 experience, character and general fitness of the applicant, and of the members thereof, if the
13 applicant is a partnership or association, and of the officers and directors thereof if the applicant
14 is a corporation, are such as to command the confidence of the community and to warrant belief
15 that the business will be operated honestly, fairly and efficiently within the scope of sections
16 443.800 to 443.893. If the director does not find the applicant's business and personal conduct
17 warrants the issuance of a license, the director shall notify the applicant of the denial with the
18 reasons stated for such denial. An applicant may appeal such denial to the board.

443.833. 1. Licenses shall be renewed on the first anniversary of the date of issuance
2 and every two years thereafter. Renewal application forms, **including evidence of satisfactory**
3 **completion of the twenty-four hours of continuing education as defined in section 443.803**
4 and fees shall be submitted to the director at least sixty days before the renewal date.

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

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

13 (2) Such fee shall be assessed without prior notice to the licensee, but shall be assessed
14 only in cases where the director possesses documentation of the licensee's continuing activity for
15 which the unexpired license was issued.

16 3. A license which is not renewed by the date required in this section shall automatically
17 become inactive. No activity regulated by sections 443.800 to 443.893 shall be conducted by
18 the licensee when a license becomes inactive. An inactive license may be reactivated by filing
19 a completed reactivation application with the director, **including evidence of satisfactory**
20 **completion of the twenty-four hours of continuing education as defined in section 443.803**
21 payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

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

443.859. Effective [May 21, 1998] **January 1, 2003**, every licensee shall have and

2 maintain a net worth of not less than [twenty-five] **fifty** thousand dollars. The director may
3 promulgate rules with respect to net worth definitions and requirements for licensees as
4 necessary to accomplish the purposes of sections 443.800 to 443.893. In lieu of the net worth
5 requirement established by this section, the director may accept evidence of conformance by the
6 licensee with the net worth requirements of the United States Department of Housing and Urban
7 Development.

443.885. On or before March first of each year, each licensee, except those exempt
2 entities provided for in subsection [8] **1** of section 443.803, shall file a report with the director
3 which shall disclose the following information with respect to the immediately preceding
4 calendar year:

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

10 (a) Conventional mortgage loans;

11 (b) Mortgage loans insured under the National Housing Act, 12 U.S.C. 1701, et seq.; and

12 (c) Mortgage loans guaranteed under the provisions of the Federal Veterans' Benefits
13 Act, 38 U.S.C. 3710 et seq.;

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

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

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

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

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