

CHAPTER 443

MORTGAGES, DEEDS OF TRUST AND MORTGAGE BROKERS

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443.130. Liability for failing to satisfy - demand by certified mail required. - 1. If the secured

party, receiving satisfaction for the debt secured pursuant to this chapter, does not, within forty-five days after request and tender of costs, submit for recording a sufficient deed of release, such secured party shall be liable to the mortgagor for the lesser of an amount of three hundred dollars a day for each day, after the forty-fifth day, that the secured party fails to submit for recording a sufficient deed of release or ten percent of the amount of the security instrument, plus court costs and attorney fees to be recovered in any court of competent jurisdiction. In the event a document submitted for recording by a secured party is rejected for recording for any reason, such secured party shall have sixty days following receipt of notice that the document has been rejected in which to submit a recordable and sufficient deed of release.

2. To qualify under this section, the mortgagor or his or her agent shall provide the request in the form of a demand letter to the secured party by certified mail, return receipt requested or in another form that provides evidence of the date of receipt to the mortgagor. The letter shall include good and sufficient evidence that the debt secured by the deed of trust was satisfied with good funds, and the expense of filing and recording the release was advanced.

3. In any action against such person who fails to release the lien as provided in subsections 1 and 2 of this section, the plaintiff, or his or her attorney, shall prove at trial that the plaintiff notified the holder of the note by certified mail, return receipt requested, or as otherwise permitted by subsection 2 of this section.

(RSMo 1939 § 3472, A.L. 1994 H.B. 1312, A.L. 1996 H.B. 1432, A.L. 2004 H.B. 959)

Prior revisions: 1929 § 3085; 1919 § 2244; 1909 § 2850

(1996) Cost means the recorder of deeds' fee for releasing the deed of trust. Murray v. Fleet Mortgage Corp., 936 S.W.2d 212 (Mo.App. E.D.).

SERVICING FROM ESCROW ACCOUNTS

443.453. Financial institutions to pay property tax, how. - Financial institutions, as defined in section 381.410, RSMo, which are mortgage servicers, shall pay property tax obligations which they service from escrow accounts, as defined in Title 24, Part 3500, Section 17, Code of Federal Regulations, in one annual payment before the first day of January of the year following the year for which the tax is levied. Escrow accounts established between such financial institutions and borrowers are contractually binding and may disallow the payment of property taxes more than once a year as such payments are authorized in section 139.053, RSMo.

(L. 1999 S.B. 386 § 408.620)

RESIDENTIAL MORTGAGE BROKERS

443.800. Citation of law. - Sections 443.800 to 443.893 shall be known and may be cited as the "Residential Mortgage Brokers License Act". (L. 1994 S.B. 718 § 1)

443.803. Definitions. - 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 within the department of economic development;

(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 mortgage 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.

(L. 1994 S.B. 718 § 3, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

*Word "or" does not appear in original rolls.

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

2. No person except a licensee or exempt entity 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 to 443.893.

(L. 1994 S.B. 718 § 2 subsections. 1, 2, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.807. Director, power to request injunction, when. - 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.

(L. 1994 S.B. 718 § 2 subsec. 3, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.809. Examination, powers of director to inspect records of unlicensed persons to determine licensing required. - When the director has reasonable cause to believe that any person has not submitted an application for licensure and is conducting any of the activities described in subsection 1 of section 443.805, the director may examine all books and records of the person and any additional documentation necessary to determine whether such person is required to be licensed pursuant to sections 443.800 to 443.893.

(L. 1994 S.B. 718 § 2 subsec. 4, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.810. Penalty for violations. - 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.

(L. 1994 S.B. 718 § 2 subsec. 5, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.812. One license issued to each broker - record required of locations where any business is conducted. - 1. Only one license shall be issued to each person conducting activities regulated by sections 443.800 to 443.893. A licensee shall register with the director each office, place of business or location where the licensee conducts any part of the licensee's business pursuant to section 443.839.

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

(L. 1994 S.B. 718 § 2 subsections. 6, 7, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.816. Residential mortgage board created - members, appointment, qualification, terms, vacancies, compensation, duties. - 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.

(L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.817. Board members to file business transactions with ethics commission - rules authorized to avoid conflict of interest. - 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 under the provisions of sections 443.800 to 443.893. 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.
(L. 1994 S.B. 718 § 4 subsec. 2)

443.819. Brokerage business to be operated under actual names of persons or corporations, violation, penalties. - 1. No person engaged in a business regulated by sections 443.800 to 443.893 shall operate 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, 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 guilty of a class C felony.

(L. 1994 S.B. 718 § 5, A.L. 2001 S.B. 538)

443.821. License to be issued on completion of requirements - notice of denial of license to contain reasons - appeal procedure. - The director shall issue a 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 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.

(L. 1994 S.B. 718 § 6 subsec. 1, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

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

(L. 1994 S.B. 718 § 6 subsec. 2, A.L. 1995 H.B. 63, et al.)
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443.825. Application content, oath and form. - 1. Application for a 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 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. 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 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.

(L. 1994 S.B. 718 § 7, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.827. Applicant for license must agree to maintain certain requirements as to methods of conducting business. - Each application 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 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 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 influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by such home mortgage;

(8) Has filed tax returns, both state and federal, for the past three years or filed 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 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 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 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 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 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.

(L. 1994 S.B. 718 § 8, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.830. License refused - grounds. - The director shall refuse to license or renew a license if:

(1) It is determined that the applicant is not in compliance with any provision of sections 443.800 to 443.893;

(2) There is substantial continuity between the applicant and any violator of any provision of sections 443.800 to 443.893; or

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

(L. 1994 S.B. 718 § 9, A.L. 1995 H.B. 63, et al.)
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443.833. Renewal of license, date, procedure, fee - failure to renew, license becomes inactive, reactivation - expires, when. - 1. Licenses shall be renewed on the first anniversary of the date of issuance and every two years thereafter. 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 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 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 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, but shall be assessed only in cases where the director possesses documentation of the licensee'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 to 443.893 shall be conducted by the licensee 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.

(L. 1994 S.B. 718 § 10 subsections. 1 to 4, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.835. Licensee ceasing activity and not desiring to be licensed, procedure - director to cancel license. - A licensee ceasing an activity or activities regulated by sections 443.800 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 shall include a plan for the withdrawal from a business regulated by sections 443.800 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.

(L. 1994 S.B. 718 § 10 subsection. 5, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.837. Waiver of license fee for in-state and out-of-state servicers, requirements. - 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.

(L. 1994 S.B. 718 § 11, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.839. Application by licensee to open additional full-service offices, fee - certificate to be issued and posted. - 1. A licensee may apply for authority to open and maintain additional offices by:

(1) Giving the director prior notice of the licensee's intention in such form as prescribed by the director;

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

2. Upon 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.

(L. 1994 S.B. 718 § 12, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.841. License to be displayed - out-of-state to produce on request - license content. - The license shall be conspicuously displayed in every Missouri office.

The license shall state the full name and address of the licensee. The license shall not be transferable or assignable. A separate certificate shall be issued for display in each Missouri office.

(L. 1994 S.B. 718 § 13, A.L. 2001 S.B. 538)

443.843. Fees to be established by director - rules authorized for assessment and collection. - 1.

The expenses of administering sections 443.800 to 443.893, including investigations and examinations provided for in sections 443.800 to 443.893 shall be borne by and assessed against entities regulated by sections 443.800 to 443.893. The director shall establish fees by regulation in at least the following categories:

- (1) Application fees;
- (2) Investigation of license applicant fees;
- (3) Examination fees;
- (4) Contingent fees; and
- (5) Such other categories as may be required

to administer sections 443.800 to 443.893.

2. In addition to any fees collected pursuant to sections 443.800 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 to 443.893 shall be set at an amount to produce revenue which will not substantially exceed the cost of administering sections 443.800 to 443.893.

(L. 1994 S.B. 718 § 14 subsecs. 1, 2, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.845. Residential mortgage licensing fund created - purpose - fees to be deposited in interest-bearing account to credit of fund - amount in fund subject to lapse into general revenue. - 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 to 443.893. The director shall transmit all fees received pursuant to sections 443.800 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.

(L. 1994 S.B. 718 § 14 subsecs 3, 4, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.847. Rules, procedure. - 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.

(L. 1994 S.B. 718 § 15, A.L. 1995 S.B. 3)

443.849. Bonding requirements. - 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.

(L. 1994 S.B. 718 § 16, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)
*Word "a" does not appear in original rolls.

443.851. Audit required annually of licensee's books and accounts - scope of audit - filed with director, authority for rules - alternative to audit requirements. -

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.

(L. 1994 S.B. 718 § 17 subsecs. 1 to 4, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 179 merged with S.B. 538)

443.853. Failure to make an audit - director to select C.P.A. by bid to perform audit - exception, certain federal audit acceptable - workpapers of all audits to be available to director.

- 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.

(L. 1994 S.B. 718 § 17 subsecs. 5, 6, 7, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.855. Advertising policies to be established by director - standards required - other rules authorized.

- In addition to such other rules the director may promulgate to effectuate sections 443.800 to 443.893, the director shall 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 to 443.893 may not be false, misleading or deceptive. No person whose activities are regulated pursuant to the provisions of sections 443.800 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 by the provisions of sections 443.800 to 443.893;

(2) All advertisements by a licensee shall contain the name and an office address of such entity, which shall conform to a name and address on record with the director.
(L. 1994 S.B. 718 § 18, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.857. Licensee shall maintain at least one full-service office with staff, duties to handle matters relating to mortgage.

- Each licensee 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 is performing services.

(L. 1994 S.B. 718 § 19, A.L. 2001 S.B. 538)

443.859. Net worth requirement for licensees.

- 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.

(L. 1994 S.B. 718 § 20, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.861. Transfer or sale of residential mortgage, notice to be given to mortgagor, contents.

- Whenever the serving of a residential mortgage is transferred or sold by a licensee, 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.

(L. 1994 S.B. 718 § 21)

443.863. Unlawful discrimination for refusal to loan or vary terms of the loan.

- 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.

(L. 1994 S.B. 718 § 22, A.L. 2001 S.B. 538)

443.865. Escrow accounts, placement by licensees - authority for rules.

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

(L. 1994 S.B. 718 § 23, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.867. Disclosure statement required of licensees, content - filed at time of application.

- At the

time of application, each residential mortgage licensee which is a broker shall disclose, within the loan brokerage disclosure statement, that:

(1) The licensee does not make loans; and

(2) The funds are provided by another person which may affect availability of funds.

(L. 1994 S.B. 718 § 24, A.L. 2001 S.B. 538)

443.869. Powers and duties of director - rulemaking authority. - 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 to 443.893;

(2) To revoke or suspend for cause any license issued pursuant to sections 443.800 to 443.893;

(3) To keep records of all licenses issued pursuant to sections 443.800 to 443.893;

(4) To receive, consider, investigate and act upon complaints made by any person in connection with any residential mortgage licensee in this state;

(5) To consider and act upon any recommendations from the residential mortgage board;

(6) To prescribe the forms of and receive:

(a) Applications for licenses; and

(b) All reports and all books and records required to be made by any residential mortgage licensee pursuant to the provisions of sections 443.800 to 443.893, including annual audited financial statements;

(7) To adopt rules necessary and proper for the administration of sections 443.800 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 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 other than an individual, as to the honesty, truthfulness, integrity and competency of any officer or director of the corporation, association or other entity or the members of a partnership;

(10) To examine the books and records of every licensee at intervals as provided by sections 443.800 to 443.893 and the rules promulgated thereunder;

(11) To enforce the provisions of sections 443.800 to 443.893;

(12) To levy fees and charges for services performed in administering the provisions of sections 443.800 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;

(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 to 443.893; and

(14) To conduct hearings for such purposes as the director deems appropriate.

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.

(L. 1994 S.B. 718 § 25, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.871. Director may issue subpoenas and subpoenas duces tecum - authority to administer oaths. - The director may issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records and other documents and materials relevant to an examination or investigation. The director or the director's duly authorized representative may administer oaths and affirmations to any person.

(L. 1994 S.B. 718 § 26 subsec. 1, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.873. Failure to comply with subpoenas, director may petition circuit court for compliance order, injunctive relief and other remedies authorized. - If any person does not comply with a subpoena or subpoena duces tecum issued or caused to be issued by the director, the director may petition the circuit court of the county in which the person subpoenaed resides or has the person's principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, accounts, records and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from advertising, promoting, soliciting, entering into, offering to enter into, continuing, or completing any residential mortgage financing transaction or residential mortgage servicing transaction. The court may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment or other disposition of the person's assets or any concealment, alteration, destruction or other disposition of books, accounts, records or other documents and materials as the court deems appropriate, until the person has fully complied with the subpoena or subpoena duces tecum and the director has completed an investigation or examination.

(L. 1994 S.B. 718 § 26 subsec. 2, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.875. Bond may be required, conditioned on compliance with subpoena, when. -

When it appears to the director that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the director pursuant to sections 443.871 to 443.877 is essential to an investigation or examination, the director, in addition to the other remedies provided for in sections 443.871 to 443.877, may apply for relief to the circuit court of the county in which the subpoenaed person resides or has the person's principal place of business. The court shall thereupon direct the issuance of an order against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the order a suitable amount of bond or payment pursuant to which the person named in the order shall be freed, having a due regard to the nature of the case.

(L. 1994 S.B. 718 § 26 subsec. 3, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.877. Writ of attachment authorized on failure to comply with subpoena. - In addition to the other provisions of sections 443.871 to 443.877, the director may seek a writ of attachment or an equivalent order from the circuit court having jurisdiction over the person who has refused to obey a subpoena, who has refused to give testimony or who has refused to produce the material described in the subpoena duces tecum.

(L. 1994 S.B. 718 § 26 subsec. 4, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.879. Reports required, failure to comply, penalty. - 1. In addition to any reports required pursuant to sections 443.800 to 443.893, every licensee shall file such other reports as the director shall request.

2. Any licensee or any officer, director, employee or agent of any licensee who fails to file any reports required by sections 443.800 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.

(L. 1994 S.B. 718 § 27, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.881. Suspension or revocation of license, grounds - procedure, penalties. - 1. Upon written notice to a licensee, the director may suspend or revoke any license issued pursuant to sections 443.800 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 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 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 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 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 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 to 443.893.

7. Whenever the director revokes or suspends a license issued pursuant to sections 443.800 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 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 to 443.893;

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

(13) Failure to pay timely any fee or charge due under the provisions of sections 443.800 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 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 to 443.893.

10. A licensee shall be subject to the disciplinary actions specified in sections 443.800 to 443.893 for a violation of subsection 9 of this section by any officer, director, 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 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, 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 to 443.893 if the director finds that:

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

(L. 1994 S.B. 718 § 28, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.883. Director to maintain a staff capable of investigations - licensees to open record for investigators.

- 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 to 443.893 and any licensees licensed pursuant to the provisions of sections 443.800 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.

(L. 1994 S.B. 718 § 29, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.885. Report to be filed with director annually, contents.

- On or before March first of each year, each licensee, except those exempt entities provided for in subsection 7 of section 443.803, 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 to 443.893.

(L. 1994 S.B. 718 § 30, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.887. General rulemaking powers of director.

- 1. In addition to such other powers as may be prescribed by sections 443.800 to 443.893, the director may promulgate rules consistent with the purpose of sections 443.800 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 to 443.893 and as may be necessary and appropriate to interpret and implement the provisions of sections 443.800 to 443.893; and

(4) Such rules as may be necessary for the enforcement of sections 443.800 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.

(L. 1994 S.B. 718 § 31, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538)

443.889. Court action to recover compensation for services, proof that services performed by valid licensee required, exception.

- Unless exempt from licensure pursuant to the provisions of sections 443.800 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 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 to 443.893 at all times during the performance of such services.

(L. 1994 S.B. 718 § 32)

443.891. Removal or prohibition notice issued on certain findings of conduct. - Upon making any one or more of the following findings, the director may issue a notice of intent to issue an order of removal or prohibition, or an order of removal and prohibition, which order may remove a named person, persons or entity or entities from participating in the affairs of one or more licensees and may be permanent or for a specific shorter period of time. The findings required by this section may be any one or more of the following:

(1) A finding that the part 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 submitted, or caused to be submitted, any document that contains multiple willful and material misstatements of facts and includes the signature of the person or entity specified in the director's order or that is notarized, certified, verified or is in any other way attested to as to the document's veracity. An application for licensure or license renewal may be considered such a document.

(L. 1994 S.B. 718 § 33, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

443.893. Receiver or conservator to be appointed by court, when - attorney general's duty. - 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 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.

(L. 1994 S.B. 718 § 34, A.L. 1995 H.B. 63, et al.)
Effective 6-13-95

REVERSE MORTGAGE

443.901. Reverse mortgage act - definitions. - 1. Sections 443.901 to 443.912 shall be known and be cited as the "Missouri Reverse Mortgage Act".

2. For the purposes of Sections 443.901 to 443.912 the following terms mean:

(1) **"Authorized lender"** or **"lender"**, a lender authorized to engage in business as a bank, savings institution or credit union under the laws of the United States or this state, residential mortgage licensee who is licensed pursuant to sections 443.800 to 443.893, RSMo, or entity that is an exempt entity pursuant to sections 443.800 to 443.893, RSMo;

(2) **"Brokered"**, the act of helping to obtain for an investor or other entity, or from an investor or other entity, for a borrower, a residential mortgage loan, including a reverse mortgage loan;

(3) **"Originated"**, advertised, solicited, processed, for which a loan application is taken, or which is closed, committed for, or funded;

(4) **"Principal"** as it relates to reverse mortgages, the total of the net amount paid to, receivable by, contracted for, or paid, or payable, for the account of the borrower, and to the extent payment is deferred, additional charges permitted by Sections 443.901 to 443.912;

(5) **"Reverse mortgage loan"**, a loan originated, made or brokered by an authorized lender which:

(a) Is secured by residential real estate property;

(b) Provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence;

(c) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(d) Otherwise complies with the terms of Sections 443.901 to 443.912.

(L. 1995 H.B. 63, et al. § 1)

443.903. Reverse mortgage regulations. - Notwithstanding any other provisions of law to the contrary, reverse mortgage loans shall be governed by the following:

(1) Payment in whole or in part is permitted without penalty at any time during the period of the loan;

(2) An advance made under a reverse mortgage and interest on the advances have priority over a lien filed after the closing of a reverse mortgage loan;

(3) A reverse mortgage loan may provide for an interest rate which is fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the property;

(4) If a reverse mortgage loan provides for periodic advances to a borrower, the advances may not be reduced in amount or number based on an adjustment in the interest rate;

(5) Lenders failing to make loan advances as required in the loan agreement and failing to cure the default as required in the loan agreement shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the lender failed to make;

(6) The repayment requirement is also expressly subject to the following additional conditions:

(a) Temporary absences from the home not to exceed sixty consecutive days do not cause the mortgage to become due and payable;

(b) Temporary absences from the home exceeding sixty consecutive days, but less than six months, do not cause the mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a satisfactory manner;

(c) The lender's right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for loan contracts. Notwithstanding the applicable statute of limitations for loan contracts, the statute of limitations commences on the date that the mortgage becomes due and payable;

(d) The lender must prominently disclose any interest or other fees to be charged during the period that commences on the date that the mortgage becomes due and payable and ends when repayment in full is made;

(7) The following fees and charges may be charged to the borrower, and financed by the lender, in connection with a reverse mortgage loan, except for loans insured or guaranteed by agencies of the federal government in which case federal law or regulation shall apply:

(a) A nonrefundable origination fee not to exceed two percent of the principal;

(b) Fees and charges prescribed by law actually and necessarily paid to public officials for perfecting, releasing or satisfying a security interest related to the reverse mortgage loan;

(c) Recording taxes to perfect documents;

(d) Bona fide closing costs paid to third parties, which shall include:

(L. 1995 H.B. 63, et al., § 5)

- a. Fees or premiums for title examination, title insurance or similar purposes, including surveys;
- b. Fees for preparation of a deed, settlement statement or other documents;
- c. Fees for notarizing deeds and other documents;

- d. Appraisal fees; and
- e. Fees for credit reports;

(e) A charge for insurance against loss of, or damage to, property where no such coverage already exists;

(f) Fixed monthly servicing fees, repair administration fees and payment plan change fees;

(8) As a convenience to the borrower, reverse mortgage loan applications may be taken by the lender over the telephone or at the borrower's home and reverse mortgage loans may be closed by mail or at a title company's office.

(L. 1995 H.B. 63, et al. § 2, A.L. 1997 H.B. 633)
Effective 6-4-97

443.906. Reverse mortgage may be made regardless of certain other transactions.

- Reverse mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions:

- (1) Limitations on the purpose and use of future advances or any other mortgage proceeds;
- (2) Limitations on future advances to a term of years, or limitations on the term of credit line advances;
- (3) Limitations on the term during which future advances take priority over intervening advances;
- (4) Requirements that a maximum mortgage amount be stated in the mortgage;
- (5) Prohibitions on balloon payments;
- (6) Prohibitions on compound interest;
- (7) Interest rate limits under the usury statutes;

(8) Requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(L. 1995 H.B. 63, et al., § 3)

443.909. Treatment of payments for certain purposes.

- Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals:

(1) Undisbursed funds shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals;

(2) This section applies to any law relating to payments, allowances, benefits or services provided on a means-tested basis by this state, including, but not limited to, supplemental security income, low-income energy assistance, property tax relief, medical assistance and general assistance.

(L. 1995 H.B. 63, et al., § 4)

443.912. Statement regarding counseling services on reverse mortgages.

- No reverse mortgage loan commitment may be made by a lender unless the loan applicant attests in writing that the applicant received from the lender at the time of initial inquiry a statement regarding the advisability and availability of independent information and counseling services on reverse mortgages. Such statement may be in a form developed by the lender or the division of finance.

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