

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 726
96TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, March 1, 2012, with recommendation that the Senate Committee Substitute do pass.

5514S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 408.052 and 443.812, RSMo, and to enact in lieu thereof two new sections relating to residential mortgage loan brokers, with existing penalty provisions.

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

Section A. Sections 408.052 and 443.812, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 408.052 and 443.812, to read as follows:

408.052. 1. No lender shall charge, require or receive, on any residential real estate loan, any points or other fees of any nature whatsoever, excepting insurance, including insurance for involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer or the seller or any other person, except that the lender may charge bona fide expenses paid by the lender to any other person or entity except to an officer, employee, or director of the lender or to any business in which any officer, employee or director of the lender owns any substantial interest for services actually performed in connection with a loan. In addition to the foregoing, if the loan is for the construction, repair, or improvement of residential real estate, the lender may charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for a default charge for any installment not paid in full within fifteen days of its scheduled due date. The restrictions of this section shall not apply:

(1) To any loan which is insured or covered by guarantee made by any department, board, bureau, commission, agency or establishment of the United States, pursuant to the authority of any act of Congress heretofore or hereafter adopted; and

19 (2) To any loan for which an offer or commitment or agreement to
20 purchase has been received from and which is made with the intention of
21 reselling such loan to the Federal Housing Administration, Farmers Home
22 Administration, Federal National Mortgage Association, Government National
23 Mortgage Association, Federal Home Loan Mortgage Corporation, or to any
24 successor to the above-mentioned organizations, to any other state or federal
25 governmental or quasi-governmental organization; and

26 (3) **To any mortgage broker making loans on manufactured or**
27 **modular homes; and**

28 (4) Provided that the 1994 reenactment of this section shall not be
29 construed to be action taken in accordance with Public Law 96-221, Section
30 501(b)(4). Any points or fees received in excess of those permitted under this
31 section shall be returned to the person from whom received upon demand.

32 2. Notwithstanding the language in subsection 1 of this section, a lender
33 may pay to an officer, employee or director of the lender, or to any business in
34 which such person has an interest, bona fide fees for services actually and
35 necessarily performed in good faith in connection with a residential real estate
36 loan, provided:

37 (1) Such services are individually listed by amount and payee on the
38 loan-closing documents; and

39 (2) Such lender may use the preemption of Public Law 96-221, Section 501
40 with respect to the residential real estate loan in question. When fees charged
41 need not be disclosed in the annual percentage rate required by Title 15, U.S.C.
42 Sections 1601, et seq., and regulations thereunder because such fees are de
43 minimis amounts or for other reasons, such fees need not be included in the
44 annual percentage rate for state examination purposes.

45 3. The lender may charge and collect bona fide fees for services actually
46 and necessarily performed in good faith in connection with a residential real
47 estate loan as provided in subsection 2 of this section; however, the lender's board
48 of directors shall determine whether such bona fide fees shall be paid to the
49 lender or businesses related to the lender in subsection 2 of this section, but may
50 allow current contractual relationships to continue for up to two years.

51 4. If any points or fees are charged, required or received, which are in
52 excess of those permitted by this section, or which are not returned upon demand
53 when required by this section, then the person paying the same points or fees or
54 his or her legal representative may recover twice the amount paid together with

55 costs of the suit and reasonable attorney's fees, provided that the action is
56 brought within five years of such payment.

57 5. Any lender who knowingly violates the provisions of this section is
58 guilty of a class B misdemeanor.

443.812. 1. Only one license shall be issued to each person conducting the
2 activities of a residential mortgage **loan** broker. A residential mortgage **loan**
3 broker shall register with the director each office, place of business or location in
4 Missouri where the residential mortgage loan broker conducts any part of the
5 residential mortgage loan broker's business pursuant to section 443.839.

6 2. Residential mortgage loan brokers may only solicit, broker, fund,
7 originate, serve and purchase residential mortgage loans in conformance with
8 sections 443.701 to 443.893 and such rules as may be promulgated by the
9 director.

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

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

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

29 **6. (1) Notwithstanding any other laws to the contrary, the**
30 **provisions of this subsection shall only apply to residential mortgage**
31 **loan brokers engaged primarily in the business of brokering, funding,**
32 **or purchasing loans that are secured by a manufactured home or**

33 modular unit as those terms are defined under chapter 700. For the
34 purposes of this subsection, the term "engaged primarily" shall mean a
35 residential mortgage loan broker that derives seventy-five percent or
36 more of its gross income in Missouri from the brokering, funding, or
37 purchasing of loans that are secured by a manufactured home or
38 modular unit as those terms are defined under chapter 700.

39 (2) No residential mortgage loan broker licensed in this state
40 shall be required to maintain a full-service office in Missouri; except
41 that, nothing in this subsection shall be construed as relieving such
42 broker of the requirements to be licensed in this state and obtain a
43 certificate of authority from the secretary of state's office to transact
44 business in this state.

45 (3) Any residential mortgage loan broker licensed in this state
46 who does not maintain a full-service office in Missouri shall file with
47 the license application an irrevocable consent, in a form to be
48 determined by the director and duly acknowledged, which provides
49 that for any suits and actions commenced against the broker in the
50 courts of this state and, if necessary for any other actions brought
51 against the broker, the venue shall lie in Missouri.

52 (4) The director may assess the reasonable costs of any
53 investigation incurred by the division which are outside the normal
54 expense of any annual or special examination or any other costs
55 incurred by the division as a result of a licensed residential mortgage
56 loan broker not maintaining a full-service office in Missouri.

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