

HB 714 -- Residential Mortgages

Sponsor: Curls

This bill changes the laws regarding the Guaranteed Home Equity Program, the Residential Mortgage Brokers License Act, and the Reverse Mortgage Act.

GUARANTEED HOME EQUITY PROGRAM

A governing commission, with no less than \$4 million in its guarantee fund, is allowed, if authorized by a referendum adopted by a majority of the voters, to establish a foreclosure prevention loan fund to provide low-interest emergency loans to eligible applicants who might be otherwise forced into foreclosure proceedings.

The commission will administer the fund subject to the following conditions:

- (1) Cumulative loans and loan guarantees cannot exceed \$3 million;
- (2) Only eligible applicants can apply for loans as established by the commission;
- (3) Loans are to be used to prevent foreclosure proceedings;
- (4) Eligible applicants cannot borrow more than the equity value in their residence;
- (5) Loans must be issued as a second lien on the property;
- (6) Interest will be charged at a rate below the market rate available to the applicant; and
- (7) A one-time application fee can be imposed for the administration of the program.

Commissioners and their family members will not be eligible to receive any financial benefit from the program.

An annual independent audit must be conducted and made available to the public.

RESIDENTIAL MORTGAGE BROKERS LICENSE ACT

The bill:

- (1) Authorizes the Director of the Division of Finance within

the Department of Insurance, Financial Institutions and Professional Registration to issue orders against any person for violations of the Residential Mortgage Brokers License Act and to examine and report the business affairs of any licensee as required under the provisions of Sections 443.800 - 443.893, RSMo, regarding mortgage brokers;

(2) Requires the Residential Mortgage Board within the division to make recommendations to the division director for the efficient administration of Sections 443.800 - 443.893 regarding mortgage brokers and to perform other duties prescribed by the division director;

(3) Changes the requirements for the issuance of a mortgage broker's license by requiring applicants to:

(a) Provide the division director with a listing of judgments entered against and bankruptcy petitions by the applicant for the preceding 10 years instead of the current seven years;

(b) Provide an audited balance sheet showing that the applicant meets the net worth requirements of Section 443.859; and

(c) File proof when applying for a new license of at least three years of experience in real estate finance or proof of the completion of a program of education in real estate finance and fair lending unless exempted by the division director;

(4) Allows the division director to impose conditions on a license if he or she determines it is necessary;

(5) Allows a licensee, upon written request, to provide an affidavit when renewing a license stating that the information submitted on a previous renewal is still true and accurate;

(6) Requires each application or renewal to affirm positively that the applicant will not knowingly make any false promises to influence or persuade or pursue any course of misrepresentation and false promises through agents, solicitors, advertising, or otherwise;

(7) Requires the licensee or license applicant to advise the division director in writing within 30 days when requesting a license to repurchase a loan or when requested by another entity to repurchase a loan and the circumstances;

(8) Increases the fee when a licensee fails to submit a completed renewal application form and the proper fees in a timely manner from \$500 to \$750 if the licensee is 30 days late and from \$1,000 to \$1,500 for each month thereafter;

(9) Allows the division director to require a licensee to provide a plan for the disposition of any residential mortgage loans not closed or funded when the license becomes inactive and allows a licensee with an inactive license to assist borrowers in the closing or funding of loans that were made when the license was active;

(10) Allows the division director to waive licensing fees if a firm services 100 or fewer real estate loans. Currently, the fees are waived for servicing 25 or fewer loans;

(11) Changes the bonding requirements for applicants from a \$20,000 surety bond to a \$100,000 fidelity bond for the purpose of protecting against any loss sustained by the commission of any dishonest or criminal act or omission. Licensees must also maintain a bond of \$100,000;

(12) Allows a licensee that is a first-tier subsidiary to submit audited consolidated financial statements of its parent company which must be filed within 90 days. A licensee who solely brokers residential mortgage loans may provide compilation financial statements in lieu of the audit;

(13) Requires all advertisements by licensees to include the words "Missouri Residential Mortgage Licensee";

(14) Requires a licensee's full-service office to be in compliance with any applicable zoning laws or ordinances and home office or business regulations. A licensee whose principal place of business is located outside Missouri must have assets of at least \$100,000 and maintain a fidelity bond in the amount of \$100,000;

(15) Requires mortgage brokers when creating an agency relationship with the borrower to:

(a) Act in the borrower's best interest and use reasonable care in performing duties;

(b) Not accept, give, or charge undisclosed remuneration at the cost of the borrower;

(c) Carry out all lawful instructions given by the borrower;

(d) Disclose all material facts that may reasonably affect the borrower; and

(e) Account for all of the borrower's money and property received as the agent;

- (16) Allows a mortgage broker to contract for or collect fees for services rendered if disclosed in advance;
- (17) Requires licensees to verify a borrower's ability to pay all the costs of a residential mortgage loan including the principal and interest, real estate taxes, homeowner's insurance, assessments, and mortgage insurance premiums;
- (18) Prohibits a licensee from providing a loan with a prepayment penalty unless a loan without a prepayment penalty is offered. Section 443.880 specifies what prepayment penalties may be charged;
- (19) Requires licensees to timely notify borrowers of any material changes in the terms of the loan or of any increases in fees by more than 10% or \$100. Timely notice is within three days after learning of the change or within 24 hours before the residential mortgage loan is closed, whichever is earlier. If the increase in fees is not disclosed, the broker must refund the amount of the increase plus any interest paid;
- (20) Requires licensees to provide a complete copy of any appraisal to the borrower within three business days of receipt but not less than 24 hours prior to the day of closing;
- (21) Prohibits licensees from financing credit life, disability, or unemployment insurance through a residential loan;
- (22) Prohibits licensees from recommending or encouraging a borrower to default or fail to make timely payments on any existing loan or debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or any portion of an existing loan or debt;
- (23) Allows the division director to suspend a license for a period not to exceed 180 days pending an investigation. If a licensee has not met the required experience or educational requirements, the division director can suspend the license until those requirements have been met. When a license is suspended, the division director will post notice of the order on an agency Internet web site maintained by the division director;
- (24) Allows the division director to impose a fine of up to \$25,000 for each separate offense for a violation of Section 443.881;
- (25) Requires the division director to obtain semiannually from the United States Department of Housing and Urban Development the default claim rates for endorsements issued by the federal department. Any licensee having a default rate equal to or

greater than 5% will be examined to determine whether the default rate is the result of practices which deviate from sound and accepted mortgage underwriting practices. Public hearings may be held accordingly. Any licensee examined must implement a plan, approved by the division director, designed to reduce the default rate and report default rates as required;

(26) Requires any information received through a hearing being conducted regarding residential mortgage brokers to be strictly confidential and made available only as part of the record of a hearing when required for purposes of judicial review or upon the express written consent of the individual served or his or her personal representative;

(27) Allows any person or entity affected by a decision of the division director to obtain a review of the decision; and

(28) Makes it unlawful, beginning August 28, 2009, for any person, unless specifically exempted, to act as a loan originator without being registered with the division director.

REVERSE MORTGAGE ACT

The bill requires a licensee to act in good faith in all relations with a borrower when transferring, dealing in, offering, or making a reverse mortgage loan under the provisions of the Reverse Mortgage Act. No licensee can employ fraudulent or deceptive acts or practices in making a reverse mortgage loan, including deceptive marketing and sales efforts.