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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 1748

March 7, 2007

Authored by Atkins and Zellers

The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to residential mortgage lending; modifying licensing and education
1.3 requirements; providing examination powers to the commissioner; prescribing
1.4 a criminal penalty; amending Minnesota Statutes 2006, sections 58.04,
1.5 subdivisions 1, 2; 58.05; 58.06, subdivision 2, by adding a subdivision; 58.08,
1.6 subdivision 3; 58.10, subdivision 1; proposing coding for new law in Minnesota
1.7 Statutes, chapters 58; 609; repealing Minnesota Statutes 2006, section 58.08,
1.8 subdivision 1.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2006, section 58.04, subdivision 1, is amended to read:

1.11 Subdivision 1. Residential mortgage originator licensing requirements. (a)
1.12 ~~Beginning August 1, 1999,~~ No person shall act as a residential mortgage originator, or
1.13 make residential mortgage loans without first obtaining a license from the commissioner
1.14 according to the licensing procedures provided in this chapter.

1.15 (b) A licensee must be either a partnership, limited liability partnership, association,
1.16 limited liability company, corporation, or other form of business organization, and must
1.17 have and maintain at all times one of the following: (1) approval as a mortgagee by
1.18 either the federal Department of Housing and Urban Development or the Federal National
1.19 Mortgage Association; (2) a minimum net worth, net of intangibles, of at least \$250,000;
1.20 or (3) a surety bond or irrevocable letter of credit in the amount of \$100,000. Net worth,
1.21 net of intangibles, must be calculated in accordance with generally accepted accounting
1.22 principles.

1.23 (c) The following persons are exempt from the residential mortgage originator
1.24 licensing requirements:

1.25 ~~(1) an employee of one mortgage originator licensee or one person holding a~~
1.26 ~~certificate of exemption;~~

- 2.1 ~~(2) a person licensed as a real estate broker under chapter 82 who is not licensed to~~
 2.2 ~~another real estate broker;~~
- 2.3 ~~(3) an individual real estate licensee who is licensed to a real estate broker as~~
 2.4 ~~described in clause (2) if:~~
- 2.5 ~~(i) the individual licensee acts only under the name, authority, and supervision of the~~
 2.6 ~~broker to whom the licensee is licensed;~~
- 2.7 ~~(ii) the broker to whom the licensee is licensed obtains a certificate of exemption~~
 2.8 ~~according to section 58.05, subdivision 2;~~
- 2.9 ~~(iii) the broker does not collect an advance fee for its residential mortgage-related~~
 2.10 ~~activities; and~~
- 2.11 ~~(iv) the residential mortgage origination activities are incidental to the real estate~~
 2.12 ~~licensee's primary activities as a real estate broker or salesperson;~~
- 2.13 ~~(4) an individual licensed as a property/casualty or life/health insurance agent under~~
 2.14 ~~chapter 60K if:~~
- 2.15 ~~(i) the insurance agent acts on behalf of only one residential mortgage originator,~~
 2.16 ~~which is in compliance with chapter 58;~~
- 2.17 ~~(ii) the insurance agent has entered into a written contract with the mortgage~~
 2.18 ~~originator under the terms of which the mortgage originator agrees to accept responsibility~~
 2.19 ~~for the insurance agent's residential mortgage-related activities;~~
- 2.20 ~~(iii) the insurance agent obtains a certificate of exemption under section 58.05,~~
 2.21 ~~subdivision 2; and~~
- 2.22 ~~(iv) the insurance agent does not collect an advance fee for the insurance agent's~~
 2.23 ~~residential mortgage-related activities;~~
- 2.24 ~~(5) (1) a person who is not in the business of making residential mortgage loans and~~
 2.25 ~~who makes no more than three such loans, with its own funds, during any 12-month period;~~
- 2.26 ~~(6) (2) a financial institution as defined in section 58.02, subdivision 10;~~
- 2.27 ~~(7) (3) an agency of the federal government, or of a state or municipal government;~~
- 2.28 ~~(8) (4) an employee or employer pension plan making loans only to its participants;~~
- 2.29 ~~(9) (5) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result~~
 2.30 ~~of a specific order issued by a court of competent jurisdiction; or~~
- 2.31 ~~(10) (6) a person exempted by order of the commissioner.~~

2.32 Sec. 2. Minnesota Statutes 2006, section 58.04, subdivision 2, is amended to read:

2.33 Subd. 2. **Residential mortgage servicer licensing requirements.** (a) ~~Beginning~~
 2.34 ~~August 1, 1999,~~ No person shall engage in activities or practices that fall within the
 2.35 definition of "servicing a residential mortgage loan" under section 58.02, subdivision

3.1 22, without first obtaining a license from the commissioner according to the licensing
3.2 procedures provided in this chapter.

3.3 (b) The following persons are exempt from the residential mortgage servicer
3.4 licensing requirements:

3.5 (1) a person licensed as a residential mortgage originator;

3.6 ~~(2) an employee of one licensee or one person holding a certificate of exemption
3.7 based on an exemption under this subdivision;~~

3.8 ~~(3) (2)~~ a person servicing loans made with its own funds, if no more than three such
3.9 loans are made in any 12-month period;

3.10 ~~(4) (3)~~ a financial institution as defined in section 58.02, subdivision 10;

3.11 ~~(5) (4)~~ an agency of the federal government, or of a state or municipal government;

3.12 ~~(6) (5)~~ an employee or employer pension plan making loans only to its participants;

3.13 ~~(7) (6)~~ a person acting in a fiduciary capacity, such as a trustee or receiver, as a result
3.14 of a specific order issued by a court of competent jurisdiction; or

3.15 ~~(8) (7)~~ a person exempted by order of the commissioner.

3.16 Sec. 3. Minnesota Statutes 2006, section 58.05, is amended to read:

3.17 **58.05 EXEMPTIONS FROM LICENSE.**

3.18 Subdivision 1. **Exempt person.** An exempt person as defined by section 58.04,
3.19 subdivision 1, paragraph ~~(b)~~ (c), and subdivision 2, paragraph (b), is exempt from the
3.20 licensing requirements of this chapter, but is subject to all other provisions of this chapter.

3.21 Subd. 3. **Certificate of exemption.** A person must obtain a certificate of exemption
3.22 from the commissioner to qualify as an exempt person under section 58.04, subdivision
3.23 1, paragraph ~~(b)~~ (c), ~~as a real estate broker under clause (2), an insurance agent under~~
3.24 ~~clause (4);~~ a financial institution under clause ~~(6)~~ (2), or by order of the commissioner
3.25 under clause ~~(10)~~ (6); or under section 58.04, subdivision 2, paragraph (b), as a financial
3.26 institution under clause ~~(4)~~ (3), or by order of the commissioner under clause ~~(8)~~ (7).

3.27 Sec. 4. Minnesota Statutes 2006, section 58.06, subdivision 2, is amended to read:

3.28 Subd. 2. **Application contents.** (a) The application must contain the name and
3.29 complete business address or addresses of the license applicant. ~~If~~ The license applicant ~~is~~
3.30 must be a partnership, limited liability partnership, association, limited liability company,
3.31 corporation, or other form of business organization, and the application must contain the
3.32 names and complete business addresses of each partner, member, director, and principal
3.33 officer. The application must also include a description of the activities of the license
3.34 applicant, in the detail and for the periods the commissioner may require.

4.1 (b) An applicant must submit one of the following:

4.2 (1) evidence which shows, to the commissioner's satisfaction, that either the federal
 4.3 Department of Housing and Urban Development or the Federal National Mortgage
 4.4 Association has approved the applicant as a mortgagee;

4.5 (2) a surety bond or irrevocable letter of credit in the amount of not less than
 4.6 \$100,000 in a form approved by the commissioner, issued by an insurance company
 4.7 or bank authorized to do so in this state. The bond or irrevocable letter of credit must
 4.8 be available for the recovery of expenses, fines, and fees levied by the commissioner
 4.9 under this chapter and for losses incurred by borrowers. The bond or letter of credit must
 4.10 be submitted with the license application, and evidence of continued coverage must be
 4.11 submitted with each renewal. Any change in the bond or letter of credit must be submitted
 4.12 for approval by the commissioner within ten days of its execution; or

4.13 (3) a copy of the applicant's most recent audited financial statement, including
 4.14 balance sheet, statement of income or loss, statements of changes in shareholder equity,
 4.15 and statement of changes in financial position. Financial statements must be as of a date
 4.16 within 12 months of the date of application.

4.17 (c) The application must also include all of the following:

4.18 (a) (1) an affirmation under oath that the applicant:

4.19 ~~(1) will maintain competent staff and adequate staffing levels, through direct~~
 4.20 ~~employees or otherwise, to meet the requirements of this chapter (i) is in compliance~~
 4.21 ~~with the requirements of section 58.125;~~

4.22 (ii) will maintain a perpetual roster of individuals employed as mortgage residential
 4.23 mortgage originators, including employees and independent contractors, which includes
 4.24 the date that mandatory initial education was completed. In addition, the roster must
 4.25 be made available to the commissioner on demand, within three business days of the
 4.26 commissioner's request;

4.27 ~~(2) (iii) will advise the commissioner of any material changes to the information~~
 4.28 ~~submitted in the most recent application within ten days of the change;~~

4.29 ~~(3) (iv) will advise the commissioner in writing immediately of any bankruptcy~~
 4.30 ~~petitions filed against or by the applicant or licensee;~~

4.31 ~~(4) is financially solvent (v) will maintain at all times either a net worth, net of~~
 4.32 ~~intangibles, of at least \$250,000 or a surety bond or irrevocable letter of credit in the~~
 4.33 ~~amount of at least \$100,000;~~

4.34 ~~(5) (vi) complies with federal and state tax laws; and~~

4.35 ~~(6) (vii) complies with sections 345.31 to 345.60, the Minnesota unclaimed property~~
 4.36 ~~law; and~~

- 5.1 ~~(7) is, or that a person in control of the license applicant is, at least 18 years of age;~~
 5.2 ~~(b) (2)~~ information as to the mortgage lending, servicing, or brokering experience
 5.3 of the applicant and persons in control of the applicant;
 5.4 ~~(c) (3)~~ information as to criminal convictions, excluding traffic violations, of persons
 5.5 in control of the license applicant;
 5.6 ~~(d) (4)~~ whether a court of competent jurisdiction has found that the applicant or
 5.7 persons in control of the applicant have engaged in conduct evidencing gross negligence,
 5.8 fraud, misrepresentation, or deceit in performing an act for which a license is required
 5.9 under this chapter;
 5.10 ~~(e) (5)~~ whether the applicant or persons in control of the applicant have been the
 5.11 subject of: an order of suspension or revocation, cease and desist order, or injunctive
 5.12 order, or order barring involvement in an industry or profession issued by this or another
 5.13 state or federal regulatory agency or by the Secretary of Housing and Urban Development
 5.14 within the ten-year period immediately preceding submission of the application; and
 5.15 ~~(f) (6)~~ other information required by the commissioner.

5.16 Sec. 5. Minnesota Statutes 2006, section 58.06, is amended by adding a subdivision to
 5.17 read:

5.18 Subd. 3. **Waiver.** The commissioner may, for good cause shown, waive any
 5.19 requirement of this section with respect to any license application or to permit a license
 5.20 applicant to submit substituted information in its license application in lieu of the
 5.21 information required by this section.

5.22 Sec. 6. Minnesota Statutes 2006, section 58.08, subdivision 3, is amended to read:

5.23 Subd. 3. **Exemption.** ~~Subdivisions 1 and Subdivision 2 do~~ does not apply to
 5.24 mortgage originators or mortgage servicers who are approved as seller/servicers by the
 5.25 Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

5.26 Sec. 7. Minnesota Statutes 2006, section 58.10, subdivision 1, is amended to read:

5.27 Subdivision 1. **Amounts.** The following fees must be paid to the commissioner:

- 5.28 (1) for an initial residential mortgage originator license, ~~\$850~~ \$2,550, \$50 of which
 5.29 is credited to the consumer education account in the special revenue fund;
 5.30 (2) for a renewal license, ~~\$450~~ \$1,350, \$50 of which is credited to the consumer
 5.31 education account in the special revenue fund;
 5.32 (3) for an initial residential mortgage servicer's license, \$1,000;
 5.33 (4) for a renewal license, \$500; and

6.1 (5) for a certificate of exemption, \$100.

6.2 Sec. 8. **[58.115] EXAMINATIONS.**

6.3 The commissioner has under this chapter the same powers with respect to
6.4 examinations that the commissioner has under section 46.04, including the authority to
6.5 charge for the direct costs of the examination, including travel and per diem expenses.

6.6 Sec. 9. **[58.126] EDUCATION REQUIREMENT.**

6.7 No person shall serve as a residential mortgage originator before the completion
6.8 of 16 hours of educational training which has been approved by the commissioner, and
6.9 covering state and federal laws concerning residential mortgage lending.

6.10 Sec. 10. **[609.614] RESIDENTIAL MORTGAGE FRAUD.**

6.11 Subdivision 1. **Residential mortgage fraud prohibited.** Whoever with the intent to
6.12 defraud for the purpose of depriving another of property or for pecuniary gain, commits,
6.13 or permits its employees or its agents to commit, any of the following acts, is guilty of
6.14 residential mortgage fraud and may be sentenced as provided in subdivision 2:

6.15 (1) knowingly makes any deliberate misstatement, misrepresentation, or omission
6.16 during the mortgage lending process with the intention that it be relied on by a mortgage
6.17 lender, borrower, or any other party to the mortgage lending process;

6.18 (2) knowingly uses or facilitates the use of any deliberate misstatement,
6.19 misrepresentation, or omission, knowing the same to contain a misstatement,
6.20 misrepresentation, or omission, during the mortgage lending process with the intention
6.21 that it be relied on by a mortgage lender, borrower, or any other party to the mortgage
6.22 lending process;

6.23 (3) receives any proceeds or any other funds in connection with a residential
6.24 mortgage closing that such person knew resulted from a violation of clause (1) or (2);

6.25 (4) conspires to violate any of the provisions of clause (1), (2), or (3); or

6.26 (5) files or causes to be filed with the official registrar of deeds of any county
6.27 of this state any document such person knows to contain a deliberate misstatement,
6.28 misrepresentation, or omission.

6.29 An offense of residential mortgage fraud must not be predicated solely upon information
6.30 lawfully disclosed under federal disclosure laws, regulations, and interpretations related
6.31 to the mortgage lending process.

6.32 Subd. 2. **Sentence.** Whoever violates this provision may be sentenced as provided
6.33 in section 609.52, subdivision 3, based on the greater of (1) the value of property, services,

7.1 or other benefit wrongfully obtained or attempted to obtain, or (2) the aggregate economic
7.2 loss suffered by any person as a result of the violation. A person convicted of a violation
7.3 of this section must be ordered to pay restitution to persons aggrieved by the violation.
7.4 Restitution must be ordered in addition to a fine or imprisonment but not in lieu of a
7.5 fine or imprisonment.

7.6 Subd. 3. **Definitions.** (a) "Mortgage lending process" means the process through
7.7 which a person seeks or obtains a residential mortgage loan including, but not limited
7.8 to, solicitation, application, or origination, negotiation of terms, third-party provider
7.9 services, underwriting, signing and closing, and funding of the loan. Documents involved
7.10 in the mortgage lending process include, but are not limited to, uniform residential loan
7.11 applications or other loan applications; appraisal reports; HUD-1 settlement statements;
7.12 supporting personal documentation for loan applications such as W-2 forms, verifications
7.13 of income and employment, bank statements, tax returns, and payroll stubs; and any
7.14 required disclosures.

7.15 (b) "Pattern of residential mortgage fraud" means one or more misstatements,
7.16 misrepresentations, or omissions made during the mortgage lending process that involve
7.17 two or more residential properties, which have the same or similar intents, results,
7.18 accomplices, victims, or methods of commission or otherwise are interrelated by
7.19 distinguishing characteristics.

7.20 (c) "Person" means a natural person, corporation, company, limited liability
7.21 company, partnership, trustee, association, or any other entity.

7.22 (d) "Residential mortgage loan" means a loan or agreement to extend credit made to
7.23 a person, which loan is secured by a deed to secure debt, security deed, mortgage, security
7.24 interest, deed of trust, or other document representing a security interest or lien upon any
7.25 interest in one-to-four family residential property located in Minnesota including the
7.26 renewal or refinancing of any such loan.

7.27 **Sec. 11. LICENSE RENEWAL EXTENSION.**

7.28 The July 31, 2007, renewal date for mortgage originators is extended to October 30,
7.29 2007, because of the changes to the licensing requirements made by this act.

7.30 **Sec. 12. REPEALER.**

7.31 Minnesota Statutes 2006, section 58.08, subdivision 1, is repealed.