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State of Minnesota

Printed Page No. 458

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 3236

February 19, 2008

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

March 18, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to commerce; regulating contracts for deed, rates of interest on certain
1.3 contracts, and mortgage lending; providing verification of the borrower's
1.4 reasonable ability to repay a mortgage loan; providing penalties and remedies
1.5 for a mortgage broker's failure to comply with the broker's duties of agency;
1.6 amending Minnesota Statutes 2006, sections 47.20, subdivision 2; 334.01,
1.7 subdivision 2; Minnesota Statutes 2007 Supplement, sections 58.13, subdivision
1.8 1; 58.18, subdivisions 1, 2.

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

1.10 Section 1. Minnesota Statutes 2006, section 47.20, subdivision 2, is amended to read:

1.11 Subd. 2. Definitions. For the purposes of this section the terms defined in this
1.12 subdivision have the meanings given them:

1.13 (1) "Actual closing costs" mean reasonable charges for or sums paid for the
1.14 following, whether or not retained by the mortgagee or lender:

1.15 (a) Any insurance premiums including but not limited to premiums for title
1.16 insurance, fire and extended coverage insurance, flood insurance, and private mortgage
1.17 insurance, but excluding any charges or sums retained by the mortgagee or lender as
1.18 self-insured retention.

1.19 (b) Abstracting, title examination and search, and examination of public records.

1.20 (c) The preparation and recording of any or all documents required by law or custom
1.21 for closing a conventional or cooperative apartment loan.

1.22 (d) Appraisal and survey of real property securing a conventional loan or real
1.23 property owned by a cooperative apartment corporation of which a share or shares of stock
1.24 or a membership certificate or certificates are to secure a cooperative apartment loan.

1.25 (e) A single service charge, which includes any consideration, not otherwise
1.26 specified herein as an "actual closing cost" paid by the borrower and received and retained

2.1 by the lender for or related to the acquisition, making, refinancing or modification of a
2.2 conventional or cooperative apartment loan, and also includes any consideration received
2.3 by the lender for making a borrower's interest rate commitment or for making a borrower's
2.4 loan commitment, whether or not an actual loan follows the commitment. The term service
2.5 charge does not include forward commitment fees. The service charge shall not exceed
2.6 one percent of the original bona fide principal amount of the conventional or cooperative
2.7 apartment loan, except that in the case of a construction loan, the service charge shall not
2.8 exceed two percent of the original bona fide principal amount of the loan. That portion of
2.9 the service charge imposed because the loan is a construction loan shall be itemized and a
2.10 copy of the itemization furnished the borrower. A lender shall not collect from a borrower
2.11 the additional one percent service charge permitted for a construction loan if it does not
2.12 perform the service for which the charge is imposed or if third parties perform and charge
2.13 the borrower for the service for which the lender has imposed the charge.

2.14 (f) Charges and fees necessary for or related to the transfer of real or personal
2.15 property securing a conventional or cooperative apartment loan or the closing of a
2.16 conventional or cooperative apartment loan paid by the borrower and received by any
2.17 party other than the lender.

2.18 (2) "Contract for deed" means an executory contract for the conveyance of real
2.19 estate, the original principal amount of which is less than ~~\$100,000~~ \$300,000. A
2.20 commitment for a contract for deed shall include an executed purchase agreement or
2.21 earnest money contract wherein the seller agrees to finance any part or all of the purchase
2.22 price by a contract for deed.

2.23 (3) "Conventional loan" means a loan or advance of credit, other than a loan or
2.24 advance of credit made by a credit union or made pursuant to section 334.011, to a
2.25 noncorporate borrower in an original principal amount of less than \$100,000, secured by a
2.26 mortgage upon real property containing one or more residential units or upon which
2.27 at the time the loan is made it is intended that one or more residential units are to be
2.28 constructed, and which is not insured or guaranteed by the secretary of housing and urban
2.29 development, by the administrator of veterans affairs, or by the administrator of the
2.30 Farmers Home Administration, and which is not made pursuant to the authority granted
2.31 in subdivision 1, clause (3) or (4). The term mortgage does not include contracts for
2.32 deed or installment land contracts.

2.33 (4) "Cooperative apartment loan" means a loan or advance of credit, other than a
2.34 loan or advance of credit made by a credit union or made pursuant to section 334.011, to a
2.35 noncorporate borrower in an original principal amount of less than \$100,000, secured by a
2.36 security interest on a share or shares of stock or a membership certificate or certificates

3.1 issued to a stockholder or member by a cooperative apartment corporation, which may
3.2 be accompanied by an assignment by way of security of the borrower's interest in the
3.3 proprietary lease or occupancy agreement in property issued by the cooperative apartment
3.4 corporation and which is not insured or guaranteed by the secretary of housing and urban
3.5 development, by the administrator of veterans affairs, or by the administrator of the
3.6 Farmers Home Administration.

3.7 (5) "Cooperative apartment corporation" means a corporation or cooperative
3.8 organized under chapter 308A or 317A, the shareholders or members of which are
3.9 entitled, solely by reason of their ownership of stock or membership certificates in the
3.10 corporation or association, to occupy one or more residential units in a building owned or
3.11 leased by the corporation or association.

3.12 (6) "Forward commitment fee" means a fee or other consideration paid to a lender
3.13 for the purpose of securing a binding forward commitment by or through the lender to
3.14 make conventional loans to two or more credit worthy purchasers, including future
3.15 purchasers, of residential units, or a fee or other consideration paid to a lender for the
3.16 purpose of securing a binding forward commitment by or through the lender to make
3.17 conventional loans to two or more credit worthy purchasers, including future purchasers,
3.18 of units to be created out of existing structures pursuant to chapter 515B, or a fee or other
3.19 consideration paid to a lender for the purpose of securing a binding forward commitment
3.20 by or through the lender to make cooperative apartment loans to two or more credit worthy
3.21 purchasers, including future purchasers, of a share or shares of stock or a membership
3.22 certificate or certificates in a cooperative apartment corporation; provided, that the forward
3.23 commitment rate of interest does not exceed the maximum lawful rate of interest effective
3.24 as of the date the forward commitment is issued by the lender.

3.25 (7) "Borrower's interest rate commitment" means a binding commitment made by
3.26 a lender to a borrower wherein the lender agrees that, if a conventional or cooperative
3.27 apartment loan is made following issuance of and pursuant to the commitment, the
3.28 conventional or cooperative apartment loan shall be made at a rate of interest not in excess
3.29 of the rate of interest agreed to in the commitment, provided that the rate of interest agreed
3.30 to in the commitment is not in excess of the maximum lawful rate of interest effective as
3.31 of the date the commitment is issued by the lender to the borrower.

3.32 (8) "Borrower's loan commitment" means a binding commitment made by a lender
3.33 to a borrower wherein the lender agrees to make a conventional or cooperative apartment
3.34 loan pursuant to the provisions, including the interest rate, of the commitment, provided
3.35 that the commitment rate of interest does not exceed the maximum lawful rate of interest
3.36 effective as of the date the commitment is issued and the commitment when issued and

4.1 agreed to shall constitute a legally binding obligation on the part of the mortgagee or
4.2 lender to make a conventional or cooperative apartment loan within a specified time
4.3 period in the future at a rate of interest not exceeding the maximum lawful rate of interest
4.4 effective as of the date the commitment is issued by the lender to the borrower; provided
4.5 that a lender who issues a borrower's loan commitment pursuant to the provisions of a
4.6 forward commitment is authorized to issue the borrower's loan commitment at a rate of
4.7 interest not to exceed the maximum lawful rate of interest effective as of the date the
4.8 forward commitment is issued by the lender.

4.9 (9) "Finance charge" means the total cost of a conventional or cooperative apartment
4.10 loan including extensions or grant of credit regardless of the characterization of the
4.11 same and includes interest, finders fees, and other charges levied by a lender directly or
4.12 indirectly against the person obtaining the conventional or cooperative apartment loan or
4.13 against a seller of real property securing a conventional loan or a seller of a share or shares
4.14 of stock or a membership certificate or certificates in a cooperative apartment corporation
4.15 securing a cooperative apartment loan, or any other party to the transaction except any
4.16 actual closing costs and any forward commitment fee. The finance charges plus the actual
4.17 closing costs and any forward commitment fee, charged by a lender shall include all
4.18 charges made by a lender other than the principal of the conventional or cooperative
4.19 apartment loan. The finance charge, with respect to wraparound mortgages, shall be
4.20 computed based upon the face amount of the wraparound mortgage note, which face
4.21 amount shall consist of the aggregate of those funds actually advanced by the wraparound
4.22 lender and the total outstanding principal balances of the prior note or notes which have
4.23 been made a part of the wraparound mortgage note.

4.24 (10) "Lender" means any person making a conventional or cooperative apartment
4.25 loan, or any person arranging financing for a conventional or cooperative apartment loan.
4.26 The term also includes the holder or assignee at any time of a conventional or cooperative
4.27 apartment loan.

4.28 (11) "Loan yield" means the annual rate of return obtained by a lender over the
4.29 term of a conventional or cooperative apartment loan and shall be computed as the
4.30 annual percentage rate as computed in accordance with sections 226.5 (b), (c), and (d) of
4.31 Regulation Z, Code of Federal Regulations, title 12, section 226, but using the definition
4.32 of finance charge provided for in this subdivision. For purposes of this section, with
4.33 respect to wraparound mortgages, the rate of interest or loan yield shall be based upon the
4.34 principal balance set forth in the wraparound note and mortgage and shall not include any
4.35 interest differential or yield differential between the stated interest rate on the wraparound

5.1 mortgage and the stated interest rate on the one or more prior mortgages included in the
5.2 stated loan amount on a wraparound note and mortgage.

5.3 (12) "Person" means an individual, corporation, business trust, partnership or
5.4 association or any other legal entity.

5.5 (13) "Residential unit" means any structure used principally for residential purposes
5.6 or any portion thereof, and includes a unit in a common interest community, a nonowner
5.7 occupied residence, and any other type of residence regardless of whether the unit is
5.8 used as a principal residence, secondary residence, vacation residence, or residence of
5.9 some other denomination.

5.10 (14) "Vendor" means any person or persons who agree to sell real estate and finance
5.11 any part or all of the purchase price by a contract for deed. The term also includes the
5.12 holder or assignee at any time of the vendor's interest in a contract for deed.

5.13 Sec. 2. Minnesota Statutes 2007 Supplement, section 58.13, subdivision 1, is amended
5.14 to read:

5.15 Subdivision 1. **Generally.** (a) No person acting as a residential mortgage originator
5.16 or servicer, including a person required to be licensed under this chapter, and no person
5.17 exempt from the licensing requirements of this chapter under section 58.04, except as
5.18 otherwise provided in paragraph (b), shall:

5.19 (1) fail to maintain a trust account to hold trust funds received in connection with a
5.20 residential mortgage loan;

5.21 (2) fail to deposit all trust funds into a trust account within three business days of
5.22 receipt; commingle trust funds with funds belonging to the licensee or exempt person; or
5.23 use trust account funds for any purpose other than that for which they are received;

5.24 (3) unreasonably delay the processing of a residential mortgage loan application,
5.25 or the closing of a residential mortgage loan. For purposes of this clause, evidence of
5.26 unreasonable delay includes but is not limited to those factors identified in section 47.206,
5.27 subdivision 7, clause (d);

5.28 (4) fail to disburse funds according to its contractual or statutory obligations;

5.29 (5) fail to perform in conformance with its written agreements with borrowers,
5.30 investors, other licensees, or exempt persons;

5.31 (6) charge a fee for a product or service where the product or service is not actually
5.32 provided, or misrepresent the amount charged by or paid to a third party for a product
5.33 or service;

5.34 (7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property
5.35 law;

6.1 (8) violate any provision of any other applicable state or federal law regulating
6.2 residential mortgage loans including, without limitation, sections 47.20 to 47.208;

6.3 (9) make or cause to be made, directly or indirectly, any false, deceptive, or
6.4 misleading statement or representation in connection with a residential loan transaction
6.5 including, without limitation, a false, deceptive, or misleading statement or representation
6.6 regarding the borrower's ability to qualify for any mortgage product;

6.7 (10) conduct residential mortgage loan business under any name other than that
6.8 under which the license or certificate of exemption was issued;

6.9 (11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for
6.10 the purpose of influencing the independent judgment of the appraiser with respect to the
6.11 value of real estate that is to be covered by a residential mortgage or is being offered as
6.12 security according to an application for a residential mortgage loan;

6.13 (12) issue any document indicating conditional qualification or conditional approval
6.14 for a residential mortgage loan, unless the document also clearly indicates that final
6.15 qualification or approval is not guaranteed, and may be subject to additional review;

6.16 (13) make or assist in making any residential mortgage loan with the intent that the
6.17 loan will not be repaid and that the residential mortgage originator will obtain title to
6.18 the property through foreclosure;

6.19 (14) provide or offer to provide for a borrower, any brokering or lending services
6.20 under an arrangement with a person other than a licensee or exempt person, provided that
6.21 a person may rely upon a written representation by the residential mortgage originator that
6.22 it is in compliance with the licensing requirements of this chapter;

6.23 (15) claim to represent a licensee or exempt person, unless the person is an employee
6.24 of the licensee or exempt person or unless the person has entered into a written agency
6.25 agreement with the licensee or exempt person;

6.26 (16) fail to comply with the record keeping and notification requirements identified
6.27 in section 58.14 or fail to abide by the affirmations made on the application for licensure;

6.28 (17) represent that the licensee or exempt person is acting as the borrower's agent
6.29 after providing the nonagency disclosure required by section 58.15, unless the disclosure
6.30 is retracted and the licensee or exempt person complies with all of the requirements of
6.31 section 58.16;

6.32 (18) make, provide, or arrange for a residential mortgage loan that is of a lower
6.33 investment grade if the borrower's credit score or, if the originator does not utilize credit
6.34 scoring or if a credit score is unavailable, then comparable underwriting data, indicates
6.35 that the borrower may qualify for a residential mortgage loan, available from or through
6.36 the originator, that is of a higher investment grade, unless the borrower is informed that

7.1 the borrower may qualify for a higher investment grade loan with a lower interest rate
7.2 and/or lower discount points, and consents in writing to receipt of the lower investment
7.3 grade loan;

7.4 For purposes of this section, "investment grade" refers to a system of categorizing
7.5 residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or
7.6 "subprime"; (ii) commonly designated by an alphabetical character with "A" being the
7.7 highest investment grade; and (iii) are distinguished by interest rate or discount points
7.8 or both charged to the borrower, which vary according to the degree of perceived risk
7.9 of default based on factors such as the borrower's credit, including credit score and
7.10 credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior
7.11 bankruptcy or foreclosure;

7.12 (19) make, publish, disseminate, circulate, place before the public, or cause to be
7.13 made, directly or indirectly, any advertisement or marketing materials of any type, or any
7.14 statement or representation relating to the business of residential mortgage loans that is
7.15 false, deceptive, or misleading;

7.16 (20) advertise loan types or terms that are not available from or through the licensee
7.17 or exempt person on the date advertised, or on the date specified in the advertisement.
7.18 For purposes of this clause, advertisement includes, but is not limited to, a list of sample
7.19 mortgage terms, including interest rates, discount points, and closing costs provided by
7.20 licensees or exempt persons to a print or electronic medium that presents the information
7.21 to the public;

7.22 (21) use or employ phrases, pictures, return addresses, geographic designations, or
7.23 other means that create the impression, directly or indirectly, that a licensee or other
7.24 person is a governmental agency, or is associated with, sponsored by, or in any manner
7.25 connected to, related to, or endorsed by a governmental agency, if that is not the case;

7.26 (22) violate section 82.49, relating to table funding;

7.27 (23) make, provide, or arrange for a residential mortgage loan all or a portion
7.28 of the proceeds of which are used to fully or partially pay off a "special mortgage"
7.29 unless the borrower has obtained a written certification from an authorized independent
7.30 loan counselor that the borrower has received counseling on the advisability of the
7.31 loan transaction. For purposes of this section, "special mortgage" means a residential
7.32 mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or
7.33 local government, or nonprofit organization, that bears one or more of the following
7.34 nonstandard payment terms which substantially benefit the borrower: (i) payments vary
7.35 with income; (ii) payments of principal or interest are not required or can be deferred under
7.36 specified conditions; (iii) principal or interest is forgivable under specified conditions;

8.1 or (iv) where no interest or an annual interest rate of two percent or less is charged in
8.2 connection with the loan. For purposes of this section, "authorized independent loan
8.3 counselor" means a nonprofit, third-party individual or organization providing homebuyer
8.4 education programs, foreclosure prevention services, mortgage loan counseling, or credit
8.5 counseling certified by the United States Department of Housing and Urban Development,
8.6 the Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention
8.7 Association, AARP, or NeighborWorks America;

8.8 (24) make, provide, or arrange for a residential mortgage loan without verifying
8.9 the borrower's reasonable ability to pay the scheduled payments of the following, as
8.10 applicable: principal; interest; real estate taxes; homeowner's insurance, assessments,
8.11 and mortgage insurance premiums. For loans in which the interest rate may vary, the
8.12 reasonable ability to pay shall be determined based on a fully indexed rate and a repayment
8.13 schedule which achieves full amortization over the life of the loan. For all residential
8.14 mortgage loans, the borrower's income and financial resources must be verified by tax
8.15 returns, payroll receipts, bank records, or other similarly reliable documents.

8.16 Nothing in this section shall be construed to limit a mortgage originator's or
8.17 exempt person's ability to rely on criteria other than the borrower's income and financial
8.18 resources to establish the borrower's reasonable ability to repay the residential mortgage
8.19 loan, including criteria established by the United States Department of Veterans Affairs
8.20 or the United States Department of Housing and Urban Development for interest rate
8.21 reduction refinancing loans or streamline loans or criteria authorized or promulgated
8.22 by Fannie Mae or Freddie Mac; however, such other criteria must be verified through
8.23 reasonably reliable methods and documentation. A statement by the borrower to the
8.24 residential mortgage originator or exempt person of the borrower's income and resources
8.25 is not sufficient to establish the existence of the income or resources when verifying the
8.26 reasonable ability to pay.

8.27 (25) engage in "churning." As used in this section, "churning" means knowingly or
8.28 intentionally making, providing, or arranging for a residential mortgage loan when the
8.29 new residential mortgage loan does not provide a reasonable, tangible net benefit to the
8.30 borrower considering all of the circumstances including the terms of both the new and
8.31 refinanced loans, the cost of the new loan, and the borrower's circumstances;

8.32 (26) the first time a residential mortgage originator orally informs a borrower of the
8.33 anticipated or actual periodic payment amount for a first-lien residential mortgage loan
8.34 which does not include an amount for payment of property taxes and hazard insurance,
8.35 the residential mortgage originator must inform the borrower that an additional amount
8.36 will be due for taxes and insurance and, if known, disclose to the borrower the amount of

9.1 the anticipated or actual periodic payments for property taxes and hazard insurance. This
9.2 same oral disclosure must be made each time the residential mortgage originator orally
9.3 informs the borrower of a different anticipated or actual periodic payment amount change
9.4 from the amount previously disclosed. A residential mortgage originator need not make
9.5 this disclosure concerning a refinancing loan if the residential mortgage originator knows
9.6 that the borrower's existing loan that is anticipated to be refinanced does not have an
9.7 escrow account; or

9.8 (27) make, provide, or arrange for a residential mortgage loan, other than a reverse
9.9 mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance
9.10 with any repayment option offered pursuant to the terms of the loan will result in negative
9.11 amortization during any six-month period.

9.12 (b) Paragraph (a), clauses (24) through (27), do not apply to a state or federally
9.13 chartered bank, savings bank, or credit union, an institution chartered by Congress under
9.14 the Farm Credit Act, or to a person making, providing, or arranging a residential mortgage
9.15 loan originated or purchased by a state agency or a tribal or local unit of government. This
9.16 paragraph supersedes any inconsistent provision of this chapter.

9.17 Sec. 3. Minnesota Statutes 2007 Supplement, section 58.18, subdivision 1, is amended
9.18 to read:

9.19 Subdivision 1. **Remedies.** A borrower injured by a violation of the standards, duties,
9.20 prohibitions, or requirements of sections 58.13, 58.136, 58.137, ~~and~~ 58.16, and 58.161
9.21 shall have a private right of action and the court shall award:

9.22 (1) actual, incidental, and consequential damages;

9.23 (2) statutory damages equal to the amount of all lender fees included in the amount
9.24 of the principal of the residential mortgage loan as defined in section 58.137;

9.25 (3) punitive damages if appropriate, and as provided in sections 549.191 and 549.20;
9.26 and

9.27 (4) court costs and reasonable attorney fees.

9.28 Sec. 4. Minnesota Statutes 2007 Supplement, section 58.18, subdivision 2, is amended
9.29 to read:

9.30 Subd. 2. **Private attorney general statute.** A borrower injured by a violation of
9.31 the standards, duties, prohibitions, or requirements of sections 58.13, 58.136, 58.137, ~~and~~
9.32 58.16, and 58.161 also may bring an action under section 8.31. A private right of action
9.33 by a borrower under this chapter is in the public interest.

10.1 Sec. 5. Minnesota Statutes 2006, section 334.01, subdivision 2, is amended to read:

10.2 Subd. 2. **Contracts of \$100,000 or more.** Notwithstanding any law to the contrary,
10.3 except as stated in section 58.137, and with respect to contracts for deed, section 47.20,
10.4 subdivision 4a, no limitation on the rate or amount of interest, points, finance charges,
10.5 fees, or other charges applies to a loan, mortgage, credit sale, or advance made under a
10.6 written contract, signed by the debtor, for the extension of credit to the debtor in the
10.7 amount of \$100,000 or more, or any written extension and other written modification of
10.8 the written contract. The written contract, written extension, and written modification are
10.9 exempt from the other provisions of this chapter.

10.10 Sec. 6. **EFFECTIVE DATES.**

10.11 Sections 1 and 5 are effective August 1, 2008. Section 2 is effective the day
10.12 following final enactment. Sections 3 and 4 are effective the day following final enactment
10.13 for actions commenced on or after that date.