

A bill for an act

relating to mortgages; prohibiting predatory lending practices; amending Minnesota Statutes 2006, sections 58.02, by adding subdivisions; 58.13, subdivision 1; 58.137, subdivision 1; 58.15; 58.16, subdivision 1, by adding a subdivision.

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

Section 1. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to read:

Subd. 27. **Investment grade.** When used in reference to residential mortgage loans, "investment grade" refers to a system of categorizing residential mortgage loans in which the pricing or terms are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure.

Sec. 2. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to read:

Subd. 28. **Prime loan.** "Prime loan" means a residential mortgage loan that is of the highest investment grade and which is commonly designated by an alphabetical character of "A."

Sec. 3. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to read:

2.1 Subd. 29. **Subprime loan.** "Subprime loan" means a residential mortgage loan
2.2 that is of less than the highest investment grade, and which is commonly designated by
2.3 an alphabetical character of "A-" to "D."

2.4 Sec. 4. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to
2.5 read:

2.6 Subd. 30. **Fully indexed rate.** "Fully indexed rate" equals the index rate prevailing
2.7 at the time a residential mortgage loan is originated, plus the margin that will apply after
2.8 the expiration of an introductory interest rate.

2.9 Sec. 5. Minnesota Statutes 2006, section 58.13, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

2.33 (9) make or cause to be made, directly or indirectly, any false, deceptive, or
2.34 misleading statement or representation in connection with a residential loan transaction

including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product;

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

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

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

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

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

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

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

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

(18) make, provide, or arrange for a residential mortgage loan that is of a lower investment grade if the borrower's credit score or, if the originator does not utilize credit scoring or if a credit score is unavailable, then comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan, available from or through the originator, that is of a higher investment grade, unless the borrower is informed that the borrower may qualify for a higher investment grade loan with a lower interest rate and/or lower discount points, and consents in writing to receipt of the lower investment grade loan;

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

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

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

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

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

(23) make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the principal and interest on the loan, and pay real estate taxes, homeowner's insurance, and private mortgage insurance if it is required in connection with the loan. For loans in which the interest rate may vary, the reasonable ability to pay must be calculated based on a rate that is fully indexed according to the terms of the loan and a repayment schedule which achieves full amortization over the life of the loan. For all residential mortgage loans, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents. A statement by the borrower to the residential mortgage originator or exempt person of the borrower's income and resources is not sufficient to establish the existence of the income or resources when verifying the reasonable ability to pay;

(24) engage in "churning." As used in this section, "churning" means to make, provide, or arrange for a residential mortgage loan to a borrower that refinances an existing

residential mortgage loan when the new loan does not have a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, the effect of the loan on current and future equity in the home, and the borrower's other financial circumstances.

A court must presume that churning has occurred if: (i) the refinanced loan was originated within 24 months preceding the date the new loan was originated; (ii) the interest rate on the new loan exceeds the interest rate of the refinanced loan; (iii) the new loan is a subprime loan; and (iv) the refinanced loan is not in foreclosure or in imminent risk of being in foreclosure. For purposes of determining whether the interest rate of the new loan exceeds the interest rate of the refinanced loan under the provision: (A) in the case of a new loan or a refinanced loan in which the interest rate may vary, the interest rate is determined based on a rate that is fully indexed according to the terms of the loan and a repayment schedule which achieves full amortization over the life of the loan; and (B) in the case of multiple new loans or multiple refinanced loans, the interest rate is determined by combining the loan balances and required payments. In order to rebut this presumption of churning, the residential mortgage originator or exempt person making the loan must demonstrate by clear and convincing evidence that the borrower received a substantial and definite benefit from the new loan;

(25) the first time a residential mortgage originator orally informs a borrower of the anticipated or actual periodic payment amount for a first-lien residential mortgage loan which does not include an amount for payment of property taxes and hazard insurance, the residential mortgage originator must inform the borrower that an additional amount will be due for taxes and insurance and, if known, disclose to the borrower the amount of the anticipated or actual periodic payments for property taxes and hazard insurance. This same oral disclosure must be made each time the residential mortgage originator orally informs the borrower of a different anticipated or actual periodic payment amount change from the amount previously disclosed. A residential mortgage originator need not make this disclosure concerning a refinancing loan if the residential mortgage originator knows that the borrower's existing loan that is anticipated to be refinanced does not have an escrow account; or

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

(b) Paragraph (a), clauses (22) through (25), do not apply to a state or federally chartered bank, savings bank, or credit union, or to a person making, providing, or

arranging a residential mortgage loan originated or purchased by a state agency or a tribal or local unit of government. This paragraph supersedes any inconsistent provision of this chapter.

Sec. 6. Minnesota Statutes 2006, section 58.137, subdivision 1, is amended to read:

Subdivision 1. **Financed interest, points, finance charges, fees, and other charges.** A residential mortgage originator making or modifying a residential mortgage loan to a borrower located in this state must not include in the principal amount of any residential mortgage loan all or any portion of any lender fee in an aggregate amount exceeding five percent of the loan amount. This subdivision shall not apply to residential mortgage loans which are insured or guaranteed by the secretary of housing and urban development or the administrator of veterans affairs or the administrator of the Farmers Home Administration or any successor.

"Lender fee" means interest, points, finance charges, fees, and other charges payable in connection with the residential mortgage loan: (1) by the borrower to any residential mortgage originator or to any assignee of any residential mortgage originator; (2) by the borrower to any third party that is not a residential mortgage originator or an assignee of a residential mortgage originator for appraisal, title insurance, or closing services, except for the cost of title insurance for which the borrower is the insured; or (3) by the lender to a mortgage broker. Lender fee does not include: (1) recording fees, mortgage registration taxes, passthroughs, or other amounts that are paid by any person to any government entity; or filing office; or other third party that is not a residential mortgage originator or an assignee of a residential mortgage originator. ~~Lender fee also does not include~~ (2) any amount that is set aside to pay taxes or insurance on any property securing the residential mortgage loan.

"Loan amount" means: (1) for a line of credit, the maximum principal amount of the line of credit; and (2) for any other residential mortgage loan, the principal amount of the residential mortgage loan excluding all interest, points, finance charges, fees, and other charges. A residential mortgage originator shall not charge, receive, or collect any excess financed interest, points, finance charges, fees, or other charges described in this subdivision, or any interest, points, finance charges, fees, or other charges with respect to this excess.

Sec. 7. Minnesota Statutes 2006, section 58.15, is amended to read:

58.15 DISCLOSURE REQUIREMENTS FOR CERTAIN RESIDENTIAL MORTGAGE ORIGINATORS.

Subdivision 1. **Nonagency disclosure.** If a residential mortgage originator or exempt person other than a mortgage broker does not contract or offer to contract to act as an agent of a borrower, or accept an advance fee, it must, within three business days of accepting an application for a residential mortgage loan, provide the borrower with a written disclosure as provided in subdivision 2.

Subd. 2. **Form and content requirements.** The disclosure must be a separate document, 8-1/2 inches by 11 inches, must be signed by the borrower and must contain the following statement in 14-point boldface print:

Originator IS NOT ACTING AS YOUR AGENT IN CONNECTION WITH OBTAINING A RESIDENTIAL MORTGAGE LOAN. WHILE WE SEEK TO ASSIST YOU IN MEETING YOUR FINANCIAL NEEDS, WE CANNOT GUARANTEE THE LOWEST OR BEST TERMS AVAILABLE IN THE MARKET.

Subd. 3. **Electronic application disclosure requirement.** In case of an electronic residential mortgage application, the disclosure requirements of this section may be satisfied by providing the disclosure statement as a separate screen if the disclosure must be acknowledged by the borrower before an application is accepted.

Subd. 4. **Exemption from disclosure requirement.** If the Department of Housing and Urban Development adopts and implements a disclosure requirement ~~for persons offering mortgage origination services~~ that the commissioner determines to be substantially similar to the disclosure required in subdivision 2, ~~licensees and exempt persons complying~~ compliance with the HUD disclosure shall be considered sufficient to ~~have complied with~~ satisfy the requirements of ~~subdivisions 1 and~~ subdivision 2.

Sec. 8. Minnesota Statutes 2006, section 58.16, subdivision 1, is amended to read:

Subdivision 1. **Compliance.** Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in this state in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent of the borrower located in this state in obtaining a loan secured by a lien on residential real estate shall be considered to have created a fiduciary relationship with the borrower and shall comply with the requirements of subdivisions 2 to 7 in addition to any duties imposed upon fiduciaries by statute or common law.

Sec. 9. Minnesota Statutes 2006, section 58.16, is amended by adding a subdivision to read:

8.1 Subd. 1a. **Mortgage broker fiduciary duties.** A mortgage broker shall be
8.2 considered to have created a fiduciary relationship with the borrower in all cases and shall
8.3 comply with the duties imposed upon fiduciaries by statute or common law.