

A bill for an act
relating to mortgages; prohibiting predatory lending practices; amending
Minnesota Statutes 2006, sections 58.13, subdivision 1; 58.137, subdivision
1; 58.15; 58.16.

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

Section 1. Minnesota Statutes 2006, section 58.13, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

(9) make or cause to be made, directly or indirectly, any false, deceptive, or 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.

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 and home insurance. For loans in which the interest rate may vary, the reasonable ability to pay must be determined based on the maximum monthly payment that could be due during the first seven years of the loan term, which amount must be

calculated with reference to the maximum interest rate allowable under the loan assuming no default by the borrower and assuming a fully indexed rate 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 benefit 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 and life 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; and (iii) 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 the maximum interest rate allowable under the loan that could be charged during the next five years from the date of origination of the new loan and assuming no default or further default by the borrower; 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) whenever the residential mortgage originator informs a borrower, orally or in writing, of the anticipated or actual periodic payment amount for a first-lien residential mortgage loan, 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 escrow payments. 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. Compliance with federal laws requiring

disclosure of a periodic payment amount constitutes compliance with this paragraph but only for purposes of the particular disclosure required under federal law; 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. 2. 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. 3. 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. 4. Minnesota Statutes 2006, section 58.16, is amended to read:

58.16 ~~RESIDENTIAL MORTGAGE ORIGINATORS~~ MORTGAGE BROKERS; STANDARDS OF CONDUCT FOR AGENCY OR ADVANCE FEE TRANSACTIONS.

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.

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

Subd. 2. **Contract provisions.** (a) A residential mortgage originator who engages in the activities described in subdivision 1 shall enter into a written contract with each borrower and shall provide a copy of the written contract to each borrower at or before the time of receipt of any fee or valuable consideration paid for mortgage origination services. The written contract must:

(1) specifically describe the services to be provided by the residential mortgage originator and if the originator collects an advance fee, the dates by which the services will be performed;

(2) specifically identify whether the residential mortgage originator may receive compensation from sources other than the borrower in connection with the loan transaction;

(3) state the total amount of commission or compensation that the borrower agrees to pay for the residential mortgage originator's services, or the basis on which the compensation will be computed;

(4) state the maximum rate of interest to be charged on any residential mortgage loan obtained;

(5) contain a statement that notifies the borrower of the right to cancel the contract according to subdivision 3 and disclose the cancellation rights and procedures provided in subdivision 3; and

(6) disclose, with respect to the 12-month period ending ten business days before the date of the contract in question, the percentage of the mortgage originator's customers for whom loans have actually been funded as a result of the residential mortgage originator's services.

(b) If an advance fee is solicited or received the contract must also:

(1) identify the trust account into which the fees or consideration will be deposited;

(2) set forth the circumstances under which the residential mortgage originator will be entitled to disbursement from the trust account; and

(3) set forth the circumstances under which the borrower will be entitled to a refund of all or part of the fee.

Subd. 3. **Cancellation.** A borrower who pays an advance fee, or who enters into a contract for residential mortgage services as set forth in subdivisions 1 and 2, has an unconditional right to rescind the contract for residential mortgage origination services at any time until midnight of the third business day after the day on which the contract is signed. Cancellation is evidenced by the borrower giving written notice of cancellation to the residential mortgage originator at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox properly addressed to the originator with postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the borrower not be bound by the contract. No act of a borrower or a residential mortgage originator is effective to waive the right to rescind as provided in this subdivision.

Subd. 4. **Trust account.** The residential mortgage originator shall deposit in a trust account within three business days all fees received before the time a loan is actually funded. The trust account must be in a financial institution located within the state of Minnesota, and, with respect to advance fees, the account must be controlled by an unaffiliated accountant, attorney, or bank.

Subd. 5. **Records.** The residential mortgage originator shall maintain a separate record of all fees received for services performed or to be performed as a residential mortgage originator. Each record must set forth the date the funds are received; the person from whom the funds are received; the amount received; the date of deposit in the escrow account, the account number, the date the funds are disbursed and the check number of the disbursement, and a description of each disbursement and the justification for the disbursement.

Subd. 6. **Monthly statement.** The residential mortgage originator shall provide to each borrower at least monthly a detailed written accounting of all disbursements of the borrower's funds from the trust account.

Subd. 7. **Disclosure of lenders.** The residential mortgage originator shall provide to each borrower at the expiration of the contract a list of the lenders or loan sources to whom loan applications were submitted on behalf of the borrower.