

AN ACT

PROVIDING FOR THE LICENSING AND REGULATION OF REAL ESTATE
CLOSING AGENTS, MAKING PENALTIES APPLICABLE, AND INCLUDING
EFFECTIVE DATE PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 535B.1, Code Supplement 2009, is amended
to read as follows:

535B.1 Definitions.

As used in this chapter unless the context otherwise
requires:

1. *Administrator* means the superintendent of the division
of banking of the department of commerce.

2. ~~Reserved.~~ *Closing agent* means a person who is not a
party to the real estate transaction, who provides real estate
closing services.

3. *Licensee* means a person licensed under this chapter;

however, any ~~individual~~ natural person who is acting solely as an employee or agent of a mortgage banker ~~or, mortgage broker,~~ or closing agent licensed under this ~~Act~~ chapter need not be separately licensed under this chapter.

4. ~~a.~~ "*Mortgage banker*" means a person who does one or more of the following:

(1) a. Makes at least four mortgage loans on residential real property located in this state in a calendar year.

(2) b. Originates at least four mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

(3) c. Services at least four mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen mortgage loans on residential real estate within the state and who does not sell or transfer mortgage loans, is exempt from this ~~subparagraph~~ paragraph if that person is otherwise exempt from the provisions of this chapter.

~~b. "*Mortgage banker*" does not include a person who is a licensed mortgage loan originator under chapter 535D.~~

5. "*Mortgage broker*" means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year. ~~"Mortgage broker" does not include a person who is a licensed mortgage loan originator under chapter 535D.~~

6. "*Mortgage loan*" means a loan of money secured by a lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior mortgage loan, and a refinancing of a prior mortgage loan.

7. "Party to the real estate transaction" means, with respect to a particular real estate transaction, a lender, seller, purchaser, or borrower.

~~7.~~ 8. "*Person*" means ~~an individual~~ a natural person, an association, joint venture or joint stock company, partnership, limited partnership, business corporation,

nonprofit corporation, or any other group of individuals however organized.

~~8.~~ 9. "*Natural person*" means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.

~~9.~~ 10. "*Registrant*" means a person registered under section 535B.3.

11. "*Real estate closing services*" means the administrative and clerical services required to carry out the conveyance or transfer of real estate or an interest in real estate located in this state to a purchaser or lender. "*Real estate closing services*" include but are not limited to preparing settlement statements, determining that all closing documents conform to the parties' contract requirements, ascertaining that the lender's instructions have been satisfied, conducting a closing conference, receiving and disbursing funds, and completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction. "*Real estate closing services*" do not include performing solely notary functions.

12. "*Residential real estate*" means the same as defined in section 535D.3.

~~10.~~ 13. "*Residential real property*" means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.

14. "*Trust account*" means a checking account with a federally insured bank, savings and loan association, credit union, or savings bank, which is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments that are received by a closing agent to effect a real estate closing.

Sec. 2. Section 535B.2, Code 2009, is amended to read as

follows:

535B.2 Exemptions.

This chapter, except for sections 535B.3, 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A bank, bank holding company, savings bank, savings and loan association, or credit union organized under the laws of this state, another state, or the United States, or a subsidiary owned or controlled by such a bank, bank holding company, savings bank, savings and loan association, or credit union.

2. A loan company licensed under chapter 536 or 536A, except when acting as a closing agent.

3. An insurance company or a subsidiary or affiliate of an insurance company organized under the laws of this state, another state, or the United States, and subject to regulation by the commissioner of insurance.

4. Mortgage lenders or mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.

5. An individual who is employed by a person otherwise exempt under this section, or who, by contract, operates exclusively on behalf of a person otherwise exempt under this section to the extent that the individual is acting within the scope of the individual's employment or exclusive contract with the exempt person and is acting within the scope of the exempt person's charter, license, authority, approval, or certificate.

6. A real estate broker licensed under chapter 543B while engaged in practice as a real estate broker.

7. A nonprofit organization qualifying for tax-exempt status under the Internal Revenue Code as defined in section 422.3 which offers housing services to low and moderate income families.

8. An attorney licensed to practice law in this state or the attorney's employees or agents acting under the attorney's direction, in a transaction where the conduct of the attorney

is regulated by the Iowa supreme court in its capacity as disciplinary authority over attorneys.

9. An officer or employee of the federal government, any state government, or a political subdivision of the state acting in an official capacity.

10. A qualified intermediary or an exchange accommodation titleholder facilitating an exchange under section 1031 of the Internal Revenue Code whose role in the transaction is limited to acting in such a capacity.

Sec. 3. NEW SECTION. **535B.2A Closing agents affiliated with attorneys.**

1. A closing agent affiliated with an attorney is not exempt from licensure under this chapter if the closing agent engages in transactions not exempt under section 535B.2, subsection 8.

2. Licensure under, and compliance with the provisions of, this chapter shall not exempt any attorney from discipline by the Iowa supreme court in its capacity as regulatory authority over attorneys licensed to practice in this state, nor from discipline by the regulatory authorities over attorneys licensed in other jurisdictions.

3. If a complaint is filed with the administrator against a closing agent affiliated with an attorney licensed to practice in this state, the administrator shall promptly give notice of the complaint to the Iowa supreme court or its designee, and cooperate in any disciplinary investigation which the court initiates against the attorney. On request of the court, the administrator shall stay any pending disciplinary action to the extent that the court determines necessary to avoid prejudice to a disciplinary action against the attorney.

Sec. 4. Section 535B.4, Code Supplement 2009, is amended to read as follows:

535B.4 General licensing requirements.

1. A person shall not act as a mortgage banker, ~~or~~ mortgage broker, or closing agent in this state or use the title "mortgage banker" or "mortgage broker" without first obtaining a license from the administrator.

2. a. License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

b. The administrator may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3, and may participate in the nationwide mortgage licensing system and registry if this requirement is implemented. In the event the requirement is implemented, the administrator may establish by rule or order new requirements as necessary and appropriate, including but not limited to requirements that applicants, and officers, directors, and others in a position of authority in relation to the applicant, submit to fingerprinting and criminal history checks, and pay associated fees relating thereto.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next December 31 after their issuance.

7. Applications for renewals of licenses under this chapter must be filed with the administrator before December 1 of the year of expiration on forms prescribed by the administrator. A renewal application must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, ~~and~~ four hundred dollars for a license to transact business as a mortgage banker, and two hundred dollars for a licensee to transact business as a closing agent. The administrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after December 1.

8. A mortgage banker or mortgage broker licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a mortgage banker or mortgage broker licensee shall conduct business only under one name at a time. However, the administrator may issue more than one license to the same person to conduct business under different names at the same time upon compliance for each such additional mortgage banker or mortgage broker license with all of the provisions of this chapter governing an original issuance of a license.

9. In addition to the application and renewal fees provided for in subsections 4 and 7, the administrator may assess application and renewal fees for each branch location of the licensee, sponsor fees, and change of sponsor fees.

Sec. 5. Section 535B.5, subsection 1, Code 2009, is amended to read as follows:

1. Upon the filing of an application for a license, if the administrator finds that the financial responsibility, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, association, or other organization and of the officers, directors, and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of this chapter, the administrator shall issue the applicant a license ~~to engage in mortgage lending, brokering, and servicing as a mortgage broker,~~ mortgage banker, or closing agent. The administrator shall approve or deny an application for a license within ninety days after the filing of the application for a license.

Sec. 6. Section 535B.8, Code Supplement 2009, is amended to read as follows:

535B.8 Operating without a license.

A person who, without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts

as, a mortgage banker, ~~or mortgage broker,~~ or closing agent in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

Sec. 7. Section 535B.9, Code Supplement 2009, is amended to read as follows:

535B.9 Bonds required of license applicants.

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state, together with evidence of whether the applicant is seeking to transact business as a mortgage broker, ~~or as a mortgage banker,~~ or closing agent. Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of one hundred thousand dollars for applicants seeking to transact business as a mortgage broker or mortgage banker. For applicants seeking to transact business as a closing agent, the bond shall be in the amount of twenty-five thousand dollars, unless the administrator by rule establishes a higher bond amount. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker, ~~or mortgage banker,~~ or closing agent and to the administrator indicating the surety's intention to cancel the bond on a specific date. ~~The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The~~

1A. For applicants seeking to transact business as a mortgage broker or mortgage banker, the bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

1B. For applicants seeking to transact business as a closing

agent, the bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state all moneys that become due or owing to the state from the applicant by virtue of this chapter.

2. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the administrator, if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

3. A licensee may not act as a closing agent unless the bond requirements in this section are in place at the time of a real estate closing.

Sec. 8. Section 535B.13, Code 2009, is amended by striking the section and inserting in lieu thereof the following:

535B.13 Civil enforcement authority.

1. If the administrator believes that a person has engaged in, or is about to engage in, an act or practice that constitutes or will constitute a violation of this chapter, the administrator may apply to the district court for an order enjoining such act or practice. Upon showing by the administrator that such person has engaged, or is about to engage, in any such act or practice, the district court shall grant an injunction.

2. The administrator may investigate or initiate a complaint against a person who is not licensed under this chapter to determine whether the person is violating this chapter.

3. In addition to or as an alternative to applying to the district court for an injunction, the administrator may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, including to cease and desist from conducting business or from any harmful activities or violations of law or regulation; may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation; may order the person to pay restitution; and may order the person

to pay the costs for the investigation and prosecution of the enforcement action including attorney fees.

4. Before issuing an order under subsection 3, the administrator shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for in disciplinary proceedings involving a licensee under this chapter.

5. A person aggrieved by the imposition of a civil penalty under subsection 3 may seek judicial review pursuant to section 17A.19.

6. An action to enforce an order under this section may be joined with an action for an injunction.

7. This chapter does not limit the power of the attorney general to determine that any other practice is unlawful under the Iowa consumer fraud Act contained in section 714.16, and to file an action under that section.

Sec. 9. Section 535B.14, Code Supplement 2009, is amended by striking the section and inserting in lieu thereof the following:

535B.14 Administrative authority.

The administrator shall have broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing this chapter, including rules providing the grounds for denial of a license based on information received as a result of a background check, character and fitness grounds, and any other grounds for which a licensee may be disciplined.

Sec. 10. NEW SECTION. **535B.19 Trust account requirements for closing agents.**

A licensee acting as a closing agent shall comply with all of the following:

1. All moneys received for disbursement during a real estate closing shall be deposited in a trust account and, when deposited, the moneys shall be designated as trust funds or trust accounts or under some other appropriate name indicating

that the moneys are not the moneys of the licensee.

2. All trust account moneys shall be deposited in a financial institution that is insured by the federal deposit insurance corporation or national credit union share insurance fund unless the transaction does not involve residential real estate and another financial institution has been designated in writing in the escrow instructions.

3. If the trust account earns interest and the interest earned is retained by any party other than the party to the real estate transaction who is the owner of the funds, the licensee shall disclose this fact in writing to the parties to the transaction.

4. A licensee shall enter into a written agreement to pay interest to a party to a transaction, or to a third party if requested by the parties to a transaction, if the client's trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the licensee shall take into consideration all relevant factors including the following:

a. The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited.

b. The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms.

c. The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

5. The licensee shall notify the administrator of the name of each financial institution in which a trust account is maintained and the name of the account on forms acceptable to the administrator. A licensee may maintain more than one trust account provided it advises the administrator of the multiple accounts.

6. A licensee shall only deposit trust funds in a trust account and shall not commingle the licensee's personal funds

or other funds in the trust account with the exception that a licensee may deposit and keep a sum not to exceed one thousand dollars in the trust account from the licensee's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account or to advance funds to pay incidental fees as permitted in section 535B.20, subsection 2.

7. Moneys deposited in a trust account are not subject to execution or attachment or to any claim against the licensee.

8. A licensee shall not knowingly keep or cause to be kept any money in any bank, credit union, or other financial institution under any name designating the moneys as belonging to a client of the licensee, unless the money was actually entrusted to the licensee for deposit in trust.

Sec. 11. NEW SECTION. **535B.20 Disbursing from a trust account.**

A licensee acting as a closing agent shall not make, in a real estate closing, a disbursement from a trust account on behalf of another person, unless the following conditions are met:

1. The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been transferred electronically to or deposited into the trust account of the closing agent and are available for withdrawal and disbursement, or have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day after the date of disbursement.

2. Nothing in this section prohibits a closing agent licensee from advancing funds not exceeding one thousand dollars from a trust account or otherwise on behalf of a party to a real estate closing for the purpose of paying incidental fees, such as conveyance and recording fees, in order to effect and close the sale, purchase, exchange, transfer, encumbrance, or lease of residential real property that is the subject of the real estate closing.

Sec. 12. REPEAL. Section 535B.17, Code Supplement 2009, is repealed.

Sec. 13. EFFECTIVE DATE. This Act takes effect July 1, 2011.

JOHN P. KIBBIE
President of the Senate

PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2348, Eighty-third General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2010

CHESTER J. CULVER
Governor