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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1840

02/28/2019 Authored by O'Driscoll and Stephenson
The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to commerce; removing references to "subprime" from Minnesota Statutes;
1.3 amending Minnesota Statutes 2018, sections 58.13, subdivision 1; 58.137,
1.4 subdivision 2; repealing Minnesota Statutes 2018, section 58.02, subdivision 27.

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

1.6 Section 1. Minnesota Statutes 2018, section 58.13, subdivision 1, is amended to read:

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

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

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

1.16 (3) unreasonably delay the processing of a residential mortgage loan application, or the
1.17 closing of a residential mortgage loan. For purposes of this clause, evidence of unreasonable
1.18 delay includes but is not limited to those factors identified in section 47.206, subdivision
1.19 7, clause (d);

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

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

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

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

2.6 (8) violate any provision of any other applicable state or federal law regulating residential
2.7 mortgage loans including, without limitation, sections 47.20 to 47.208 and 47.58;

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

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

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

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

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

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

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

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

3.1 (17) represent that the licensee or exempt person is acting as the borrower's agent after
3.2 providing the nonagency disclosure required by section 58.15, unless the disclosure is
3.3 retracted and the licensee or exempt person complies with all of the requirements of section
3.4 58.16;

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

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

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

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

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

3.33 (22) violate section 82.77, relating to table funding;

4.1 (23) make, provide, or arrange for a residential mortgage loan all or a portion of the
4.2 proceeds of which are used to fully or partially pay off a "special mortgage" unless the
4.3 borrower has obtained a written certification from an authorized independent loan counselor
4.4 that the borrower has received counseling on the advisability of the loan transaction. For
4.5 purposes of this section, "special mortgage" means a residential mortgage loan originated,
4.6 subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit
4.7 organization, that bears one or more of the following nonstandard payment terms which
4.8 substantially benefit the borrower: (i) payments vary with income; (ii) payments of principal
4.9 or interest are not required or can be deferred under specified conditions; (iii) principal or
4.10 interest is forgivable under specified conditions; or (iv) where no interest or an annual
4.11 interest rate of two percent or less is charged in connection with the loan. For purposes of
4.12 this section, "authorized independent loan counselor" means a nonprofit, third-party
4.13 individual or organization providing homebuyer education programs, foreclosure prevention
4.14 services, mortgage loan counseling, or credit counseling certified by the United States
4.15 Department of Housing and Urban Development, the Minnesota Home Ownership Center,
4.16 the Minnesota Mortgage Foreclosure Prevention Association, AARP, or NeighborWorks
4.17 America;

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

4.26 Nothing in this section shall be construed to limit a mortgage originator's or exempt
4.27 person's ability to rely on criteria other than the borrower's income and financial resources
4.28 to establish the borrower's reasonable ability to repay the residential mortgage loan, including
4.29 criteria established by the United States Department of Veterans Affairs or the United States
4.30 Department of Housing and Urban Development for interest rate reduction refinancing loans
4.31 or streamline loans, or criteria authorized or promulgated by the Federal National Mortgage
4.32 Association or Federal Home Loan Mortgage Corporation; however, such other criteria
4.33 must be verified through reasonably reliable methods and documentation. The mortgage
4.34 originator's analysis of the borrower's reasonable ability to repay may include, but is not
4.35 limited to, consideration of the following items, if verified: (1) the borrower's current and

5.1 expected income; (2) current and expected cash flow; (3) net worth and other financial
5.2 resources other than the consumer's equity in the dwelling that secures the loan; (4) current
5.3 financial obligations; (5) property taxes and insurance; (6) assessments on the property; (7)
5.4 employment status; (8) credit history; (9) debt-to-income ratio; (10) credit scores; (11) tax
5.5 returns; (12) pension statements; and (13) employment payment records, provided that no
5.6 mortgage originator shall disregard facts and circumstances that indicate that the financial
5.7 or other information submitted by the consumer is inaccurate or incomplete. A statement
5.8 by the borrower to the residential mortgage originator or exempt person of the borrower's
5.9 income and resources or sole reliance on any single item listed above is not sufficient to
5.10 establish the existence of the income or resources when verifying the reasonable ability to
5.11 pay.

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

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

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

5.32 (b) Paragraph (a), clauses (24) through (27), do not apply to a state or federally chartered
5.33 bank, savings bank, or credit union, an institution chartered by Congress under the Farm
5.34 Credit Act, or to a person making, providing, or arranging a residential mortgage loan

6.1 originated or purchased by a state agency or a tribal or local unit of government. This
 6.2 paragraph supersedes any inconsistent provision of this chapter.

6.3 **EFFECTIVE DATE.** This section is effective July 1, 2019.

6.4 Sec. 2. Minnesota Statutes 2018, section 58.137, subdivision 2, is amended to read:

6.5 Subd. 2. **Prepayment penalties.** (a) A residential mortgage originator making a
 6.6 residential mortgage loan that is a prime loan to a borrower located in this state shall not
 6.7 charge, receive, or collect any prepayment penalty, fee, premium, or other charge:

6.8 (1) for any partial prepayment of the residential mortgage loan; or

6.9 (2) for any prepayment of the residential mortgage loan upon the sale of any residential
 6.10 real property, or the sale of any stock, interest, or lease relating to cooperative ownership
 6.11 of residential real property, securing the loan; or

6.12 (3) for any prepayment of the residential mortgage loan if the prepayment is made more
 6.13 than 42 months after the date of the note or other agreement for the residential mortgage
 6.14 loan; or

6.15 (4) for any prepayment of the residential mortgage loan if the aggregate amount of all
 6.16 prepayment penalties, fees, premiums, and other charges exceeds the lesser of (i) an amount
 6.17 equal to two percent of the unpaid principal balance of the residential mortgage loan at the
 6.18 time of prepayment, or (ii) an amount equal to 60 days' interest, at the interest rate in effect
 6.19 on the residential mortgage loan at the time of prepayment, on the unpaid principal balance
 6.20 of the residential mortgage loan at the time of prepayment.

6.21 (b) If a residential mortgage originator offers or makes residential mortgage loans to
 6.22 any borrowers located in this state with prepayment penalties, fees, premiums, or other
 6.23 charges exceeding the maximum amount under paragraph (a), clause (4), then the residential
 6.24 mortgage originator shall provide the following disclosure to each prospective borrower
 6.25 located in this state that requests a residential mortgage loan from the residential mortgage
 6.26 originator, whether or not the prospective borrower receives a residential mortgage loan:

6.27 THIS IS VERY IMPORTANT

6.28 THIS LENDER CHARGES YOU A SUBSTANTIAL PENALTY IF YOU PAY OFF OR
 6.29 REFINANCE YOUR LOAN BEFORE MATURITY. ASK THE LENDER HOW MUCH
 6.30 THE PENALTY WILL BE FOR YOUR LOAN.

6.31 The residential mortgage originator shall read the disclosure to the prospective borrower
 6.32 when the prospective borrower requests a residential mortgage loan, and again within three

7.1 days before the borrower signs the note or other agreement for the residential mortgage
7.2 loan. The residential mortgage originator also shall provide the disclosure to the prospective
7.3 borrower in writing so that it is received by the prospective borrower within five days after
7.4 the residential mortgage originator receives the prospective borrower's request for a
7.5 residential mortgage loan, and again within three days before the prospective borrower signs
7.6 the note or other agreement for the residential mortgage loan. The written disclosure must
7.7 be stated in at least 16-point capitalized boldface type on a single sheet of paper that contains
7.8 only the disclosure, the date on which the disclosure form is sent or provided, the name,
7.9 address, and telephone number of the residential mortgage originator, the name and address
7.10 of the prospective borrower, and, at the option of the residential mortgage originator, the
7.11 prospective borrower's dated and signed acknowledgment of receipt of the disclosure form.
7.12 The provisions of the disclosure form, other than the disclosure in this subdivision, are not
7.13 required to be in at least 16-point capitalized boldface type. The prospective borrower shall
7.14 be permitted to keep a copy of each written disclosure form. When a prospective borrower
7.15 asks a residential mortgage originator for information about a prepayment penalty, the
7.16 residential mortgage originator shall give the prospective borrower the requested information,
7.17 and shall tell the borrower the highest aggregate amount of the prepayment penalties, fees,
7.18 premiums, and other charges that the residential mortgage originator would charge to the
7.19 prospective borrower for prepayment of the residential mortgage loan one year after it is
7.20 funded, based on a hypothetical unpaid principal balance of \$100,000 and also based on
7.21 the highest interest rate that the residential mortgage originator would charge to the
7.22 prospective borrower. A mortgage originator responding to requests for residential mortgage
7.23 loans via the Internet may make the disclosure in a manner acceptable to the commissioner.

7.24 (c) A residential mortgage originator shall not enter into a ~~subprime~~ loan that contains
7.25 a provision requiring or permitting the imposition of a penalty, fee, premium, or other charge
7.26 in the event the residential mortgage loan is prepaid in whole or in part. ~~This prohibition~~
7.27 ~~does~~ if the loan also contains an annual percentage rate that:

7.28 (1) for an adjustable rate loan secured by a first lien on a dwelling that can increase in
7.29 interest rate but not decrease in interest rate below the fully indexed rate at the time of
7.30 origination, is more than two percentage points above the yield on United States Treasury
7.31 securities having comparable periods of maturity as of (i) the 15th day of the preceding
7.32 month if the rate is set between the first and the 14th day of the month, or (ii) the 15th day
7.33 of the current month if the rate is set on or after the 15th day;

7.34 (2) for all other loans secured by a first lien on a dwelling, is more than three percentage
7.35 points above the yield on United States Treasury securities having comparable periods of

8.1 maturity as of (i) the 15th day of the preceding month if the rate is set between the first and
8.2 the 14th day of the month, or (ii) the 15th day of the current month if the rate is set on or
8.3 after the 15th day; and

8.4 (3) for loans secured by a subordinate lien on a dwelling, is more than five percentage
8.5 points above the yield on United States Treasury securities having comparable periods of
8.6 maturity as of (i) the 15th day of the preceding month if the rate is set between the first and
8.7 the 14th day of the month, or (ii) the 15th day of the current month if the rate is set on or
8.8 after the 15th day.

8.9 (d) The prohibitions in this subdivision do not apply to any loan with a principal amount
8.10 that, or, in the case of an open-end credit plan, in which the borrower's initial maximum
8.11 credit limit, exceeds the conforming loan size limit for a single-family dwelling as established
8.12 from time to time by ~~Fannie Mae~~ the Federal Housing Finance Administration or its
8.13 successor.

8.14 (e) For purposes of this section, annual percentage rate has the meaning given in Code
8.15 of Federal Regulations, title 12, part 226.

8.16 **EFFECTIVE DATE.** This section is effective July 1, 2019.

8.17 **Sec. 3. REPEALER.**

8.18 Minnesota Statutes 2018, section 58.02, subdivision 27, is repealed.

8.19 **EFFECTIVE DATE.** This section is effective July 1, 2019.

58.02 DEFINITIONS.

Subd. 27. **Subprime loan.** "Subprime loan" means, in the case of an adjustable rate loan secured by a first lien on a dwelling that can increase in interest rate but not decrease in interest rate below the fully indexed rate at the time of origination, a loan for which the annual percentage rate (APR) is greater than two percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For all other loans secured by a first lien on a dwelling, the term means a loan for which the APR is greater than three percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For loans secured by a subordinate lien on a dwelling, the term means a loan for which the APR is greater than five percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For purposes of this section, the annual percentage rate has the meaning given in Code of Federal Regulations, title 12, part 226.