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S.98

Introduced by Committee on Economic Development, Housing and General
Affairs

Date: March 15, 2011

Subject: Commerce and trade; licensed lender; owner financing

Statement of purpose: This bill proposes to provide an exemption from
Vermont's licensed lender requirements for sellers of owner-financed property.

An act relating to authorizing owner-financed property sales

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS AND PURPOSE

(1) During the 2009 legislative session Vermont enacted Act 29 to bring Vermont law and the License Lender Statue (8 VSA Chapter 73) into compliance with the mandates of the federal Secure and Fair Enforcement for Mortgage Licensing Act (the "SAFE Act"). The SAFE Act addressed issues related to residential mortgage loans.

(2) The general assembly finds that there remains confusion and misunderstanding regarding seller financing of property other than residential real estate. Act 29 did not alter Chapter 73 as it relates to seller financing of property other than residential real estate. This act clarifies that a seller of real estate, other than residential real estate, may finance the sale of his or her real estate without obtaining a license under Chapter 73. The financing of residential real estate, however, remains subject to the licensing requirements and the limited exemptions found in Chapter 73.

(3) The general assembly finds that there remains confusion and misunderstanding about the exemption for loans between immediate family members. Act 29 provided an exemption from licensing for residential mortgage loans between immediate family members. It appears that some have interpreted Chapter 73 to only permit "residential mortgage loans"

between immediate family members. This act clarifies that any loan between immediate family members, regardless of whether it is a residential mortgage loan, car loan, school loan, or any other type of loan, is exempt from the licensing requirements of Chapter 73.

(4) The general assembly finds that it is appropriate to expand the definition of “immediate family member” to include former spouses, step-grandparents, and step-grandchildren. The general assembly finds that the distinction between “spouse” and “former spouse” in a divorce proceeding and property settlement may simply be a matter of timing. Thus, it is appropriate to exempt licensing requirements for loans between former spouses in order to facilitate property settlements in divorce proceedings. The general assembly also finds that including “step-grandparents” and “step-grandchildren” in the definition of “immediate family member” is consistent with the current definition that already includes “stepparents”, “stepchildren”, and stepsiblings” and completes the step-family relationship.

(5) The general assembly believes that this act is consistent with the mandates of the SAFE Act and with the current interpretive guidance issued by the U.S. Department of Housing and Urban Development (“HUD”). The general assembly understands that HUD has been given interpretive authority for the SAFE Act and that HUD is in the process of publishing SAFE Act rules. In the event any of the provisions of this act are inconsistent with HUD’s final SAFE Act rules, the general assembly understands that it will have a reasonable period of time to review the final SAFE Act rules and to amend Chapter 73 accordingly.

1 Sec. ~~1~~ 2. 8 V.S.A. chapter 73 is amended to read:

2 CHAPTER 73. LICENSED LENDERS

3 § 2200. DEFINITIONS

4 As used in this chapter:

5 * * *

6 (7) “Immediate family member” means a spouse, former spouse, child,
7 sibling, parent, grandparent, or grandchild, including stepparents, stepchildren,
8 stepsiblings, step-grandparents, step-grandchildren, and adoptive relationships.

9 * * *

1 § 2201. LICENSES REQUIRED

2 * * *

3 (d) No lender license, mortgage broker license, or sales finance company
4 license shall be required of:

5 (1) a state agency, political subdivision, or other public instrumentality
6 of the state;

7 (2) a federal agency or other public instrumentality of the United States;

8 (3) a gas or electric utility subject to the jurisdiction of the public service
9 board engaging in energy conservation or safety loans;

10 (4) a depository institution;

11 (5) a pawnbroker;

12 (6) an insurance company;

13 (7) a seller of real estate, goods, or services ~~that~~ who finances the sale of
14 ~~such~~ his or her real estate, goods, or services, other than a residential mortgage
15 loan;

16 * * *

17 (14) any individual who offers or negotiates terms of a ~~residential~~
18 ~~mortgage~~-loan with or on behalf of an immediate family member of the
19 individual.

20 * * *

21 Sec. ~~2~~3. EFFECTIVE DATE

1 This act shall take effect on passage.