

**House Study Bill 629 - Introduced**

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
COMMERCE/BANKING DIVISION  
BILL)

**A BILL FOR**

1 An Act providing for the licensing and regulation of real  
2 estate closing agents, making penalties applicable, and  
3 including effective date provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

3 **535B.1 Definitions.**

4 As used in this chapter unless the context otherwise  
5 requires:

6 1. "Administrator" means the superintendent of the division  
7 of banking of the department of commerce.

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

11 3. "Licensee" means a person licensed under this chapter;  
12 however, any ~~individual~~ natural person who is acting solely as  
13 an employee or agent of a mortgage banker ~~or, mortgage broker,~~  
14 or closing agent licensed under this Act ~~chapter~~ need not be  
15 separately licensed under this chapter.

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

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

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

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

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

32 5. "Mortgage broker" means a person who arranges or  
33 negotiates, or attempts to arrange or negotiate, at least four  
34 mortgage loans or commitments for four or more such loans on  
35 residential real property located in this state in a calendar

1 year. ~~"Mortgage broker" does not include a person who is a~~  
2 ~~licensed mortgage loan originator under chapter 535D.~~

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

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

10 ~~7.~~ 8. "Person" means an individual a natural person,  
11 an association, joint venture or joint stock company,  
12 partnership, limited partnership, business corporation,  
13 nonprofit corporation, or any other group of individuals  
14 however organized.

15 ~~8.~~ 9. "Natural person" means an individual who is not  
16 an association, joint venture, or joint stock company,  
17 partnership, limited partnership, business corporation,  
18 nonprofit corporation, other business entity, or any other  
19 group of individuals or business entities, however organized.

20 ~~9.~~ 10. "Registrant" means a person registered under section  
21 535B.3.

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

35 12. "Residential real estate" means the same as defined in

1 section 535D.3.

2 ~~10.~~ 13. "*Residential real property*" means real property,  
3 which is an owner-occupied single-family or two-family  
4 dwelling, located in this state, occupied or used or intended  
5 to be occupied or used for residential purposes, including an  
6 interest in any real property covered under chapter 499B.

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

13 Sec. 2. Section 535B.2, Code 2009, is amended to read as  
14 follows:

15 **535B.2 Exemptions.**

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

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

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

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

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

35 5. An individual who is employed by a person otherwise

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

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

9 7. A nonprofit organization qualifying for tax-exempt  
10 status under the Internal Revenue Code as defined in section  
11 422.3 which offers housing services to low and moderate income  
12 families.

13 8. A licensed attorney admitted to practice in this state  
14 acting solely as an incident to the practice of law.

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

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

22 Sec. 3. Section 535B.4, Code Supplement 2009, is amended to  
23 read as follows:

24 **535B.4 General licensing requirements.**

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

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

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

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

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

16     5. Licenses granted under this chapter are not assignable.

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

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

30     8. A mortgage banker or mortgage broker licensee shall not  
31 conduct business under any other name than that given in the  
32 license. A fictitious name may be used, but a mortgage banker  
33 or mortgage broker licensee shall conduct business only under  
34 one name at a time. However, the administrator may issue more  
35 than one license to the same person to conduct business under

1 different names at the same time upon compliance for each such  
2 additional mortgage banker or mortgage broker license with  
3 all of the provisions of this chapter governing an original  
4 issuance of a license.

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

9 Sec. 4. Section 535B.5, subsection 1, Code 2009, is amended  
10 to read as follows:

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

25 Sec. 5. Section 535B.8, Code Supplement 2009, is amended to  
26 read as follows:

27 **535B.8 Operating without a license.**

28 A person who, without first obtaining a license under  
29 this chapter, engages in the business or occupation of, or  
30 advertises or holds the person out as, or claims to be, or  
31 temporarily acts as, a mortgage banker, ~~or mortgage broker,~~ or  
32 closing agent in this state is guilty of a class "D" felony and  
33 may be prosecuted by the attorney general or a county attorney.

34 Sec. 6. Section 535B.9, Code Supplement 2009, is amended to  
35 read as follows:

1     **535B.9 Bonds required of license applicants.**

2     1. An applicant for a license shall file with the  
3 administrator a bond furnished by a surety company authorized  
4 to do business in this state, together with evidence of whether  
5 the applicant is seeking to transact business as a mortgage  
6 broker, or as a mortgage banker, or closing agent. Until  
7 such time as the superintendent pursuant to administrative  
8 rule determines a bond amount that reflects the dollar value  
9 of loans originated, the bond shall be in the amount of one  
10 hundred thousand dollars for applicants seeking to transact  
11 business as a mortgage broker or mortgage banker. For  
12 applicants seeking to transact business as a closing agent,  
13 the bond shall be in the amount of two hundred fifty thousand  
14 dollars, unless the administrator by rule establishes a higher  
15 bond amount. The bond shall be continuous in nature until  
16 canceled by the surety with not less than thirty days' notice  
17 in writing to the mortgage broker, ~~or mortgage banker,~~ or  
18 closing agent and to the administrator indicating the surety's  
19 intention to cancel the bond on a specific date. The bond  
20 shall be for the use of the state and any persons who may  
21 have causes of action against the applicant. The bond shall  
22 be conditioned upon the applicant's faithfully conforming to  
23 and abiding by this chapter and any rules adopted under this  
24 chapter and shall require that the surety pay to the state  
25 and to any persons all moneys that become due or owing to the  
26 state and to the persons from the applicant by virtue of this  
27 chapter.

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

33     3. An applicant seeking to transact business as a closing  
34 agent shall maintain a policy of errors and omissions insurance  
35 executed by an insurer authorized to do business in this state



1 in an amount not less than two hundred fifty thousand dollars  
2 per claim, and five hundred thousand dollars in the aggregate.

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

6 Sec. 7. Section 535B.13, Code 2009, is amended by striking  
7 the section and inserting in lieu thereof the following:

8 **535B.13 Civil enforcement authority.**

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

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

21 3. In addition to or as an alternative to applying to the  
22 district court for an injunction, the administrator may issue  
23 an order to a person who is not licensed under this chapter to  
24 require compliance with this chapter, including to cease and  
25 desist from conducting business or from any harmful activities  
26 or violations of law or regulation; may impose a civil penalty  
27 against such person for any violation of this chapter in an  
28 amount up to five thousand dollars for each violation; may  
29 order the person to pay restitution; and may order the person  
30 to pay the costs for the investigation and prosecution of the  
31 enforcement action including attorney fees.

32 4. Before issuing an order under subsection 3, the  
33 administrator shall provide the person written notice and  
34 the opportunity to request a hearing. The hearing must be  
35 requested within thirty days after receipt of the notice

1 and shall be conducted in the same manner as provided for  
2 in disciplinary proceedings involving a licensee under this  
3 chapter.

4 5. A person aggrieved by the imposition of a civil penalty  
5 under subsection 3 may seek judicial review pursuant to section  
6 17A.19.

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

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

13 Sec. 8. Section 535B.14, Code Supplement 2009, is amended  
14 by striking the section and inserting in lieu thereof the  
15 following:

16 **535B.14 Administrative authority.**

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

24 Sec. 9. NEW SECTION. **535B.19 Trust account requirements for**  
25 **closing agents.**

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

28 1. All moneys received for disbursement during a real  
29 estate closing shall be deposited in a trust account and, when  
30 deposited, the moneys shall be designated as trust funds or  
31 trust accounts or under some other appropriate name indicating  
32 that the moneys are not the moneys of the licensee.

33 2. All trust account moneys shall be deposited in a  
34 financial institution that is insured by the federal deposit  
35 insurance corporation or national credit union share insurance

1 fund unless the transaction does not involve residential real  
2 estate and another financial institution has been designated in  
3 writing in the escrow instructions.

4 3. Unless there is a written agreement between all  
5 parties to the transaction to the contrary, or the provisions  
6 of subsection 4 apply, all interest earned on the trust  
7 account shall be transferred on a calendar quarter basis  
8 to the treasurer of state for transfer to the Iowa finance  
9 authority for deposit in the housing trust fund established  
10 in section 16.181. The amount to be remitted to the state  
11 shall be the amount of interest earned less any service charges  
12 directly attributable to the requirement of maintaining an  
13 interest-bearing account and of remitting the interest to  
14 the state. The licensee shall have the depository remit  
15 the interest directly. The licensee shall not benefit  
16 from interest received on funds of others in the licensee's  
17 possession.

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

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

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

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

34 5. The licensee shall notify the administrator of the name  
35 of each financial institution in which a trust account is

1 maintained and the name of the account on forms acceptable to  
2 the administrator. A licensee may maintain more than one trust  
3 account provided it advises the administrator of the multiple  
4 accounts.

5 6. A licensee shall only deposit trust funds in a trust  
6 account and shall not commingle the licensee's personal funds  
7 or other funds in the trust account with the exception that a  
8 licensee may deposit and keep a sum not to exceed one thousand  
9 dollars in the trust account from the licensee's personal  
10 funds, which sum shall be specifically identified and deposited  
11 to cover bank service charges relating to the trust account or  
12 to advance funds to pay incidental fees as permitted in section  
13 535B.20, subsection 2.

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

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

21 Sec. 10. NEW SECTION. 535B.20 **Disbursing from a trust**  
22 **account.**

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

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

33 2. Nothing in this section prohibits a closing agent  
34 licensee from advancing funds not exceeding one thousand  
35 dollars from a trust account or otherwise on behalf of a party

1 to a real estate closing for the purpose of paying incidental  
2 fees, such as conveyance and recording fees, in order to effect  
3 and close the sale, purchase, exchange, transfer, encumbrance,  
4 or lease of residential real property that is the subject of  
5 the real estate closing.

6 Sec. 11. REPEAL. Section 535B.17, Code Supplement 2009, is  
7 repealed.

8 Sec. 12. EFFECTIVE DATE. This Act takes effect July 1,  
9 2011.

10

EXPLANATION

11 This bill adds provisions relating to the licensure and  
12 regulation of real estate closing agents to Code chapter 535B,  
13 which currently provides for the licensure and regulation of  
14 mortgage bankers and mortgage brokers.

15 The bill makes several changes to definitions applicable to  
16 the Code chapter. The bill clarifies that a natural person  
17 acting solely as an employee or agent of a mortgage banker,  
18 mortgage broker, or closing agent need not be separately  
19 licensed under Code chapter 535, and deletes provisions that  
20 a person who is a licensed mortgage loan originator pursuant  
21 to Code chapter 535D is not included within the definition  
22 of a mortgage banker or mortgage broker. The bill defines  
23 a "closing agent" as a person not a party to a real estate  
24 transaction who provides real estate closing services, and  
25 provides associated definitions of "party to the real estate  
26 transaction", "real estate closing services", "residential real  
27 estate", and "trust account".

28 The bill qualifies a current exemption from most provisions  
29 of Code chapter 535B applicable to loan companies to apply the  
30 exemption to such companies except when acting as a closing  
31 agent. The bill adds exemptions for licensed attorneys;  
32 federal, state, and local officers or employees acting in their  
33 official capacities; and qualified intermediaries or exchange  
34 accommodation titleholders facilitating an exchange pursuant to  
35 Internal Revenue Code section 1031.

1 The bill adds references to closing agents to provisions  
2 and requirements relating to general licensing, penalties for  
3 unauthorized practice, and bonding. The bill establishes a  
4 bond requirement of \$250,000 for applicants seeking to transact  
5 business as a closing agent, and requires such applicants  
6 to maintain errors and omissions insurance coverage. The  
7 bill clarifies that provisions regarding conducting business  
8 under any other name than that specified in a license apply to  
9 mortgage banker and mortgage broker licensees.

10 The bill adds new provisions concerning the civil  
11 enforcement authority of the superintendent of the division  
12 of banking acting as the administrator of the chapter's  
13 provisions. The authority encompasses injunctive relief,  
14 investigative authority, cease and desist orders, civil  
15 penalties, and notice and hearing provisions. The bill also  
16 adds new provisions granting broad administrative authority to  
17 the administrator.

18 The bill imposes trust account requirements applicable  
19 to closing agents and conditions governing the making of  
20 disbursements from such trust accounts in a real estate  
21 closing.

22 The bill takes effect July 1, 2011.