

Senate Study Bill 3155 - 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.