

SENATE BILL REPORT

SB 5575

As Reported By Senate Committee On:
Financial Institutions, Insurance & Housing, March 5, 1997

Title: An act relating to standards for licensing mortgage brokers.

Brief Description: Regulating mortgage brokers.

Sponsors: Senators Winsley, Prentice and Hale.

Brief History:

Committee Activity: Financial Institutions, Insurance & Housing: 2/5/97, 3/5/97 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, INSURANCE & HOUSING

Majority Report: That Substitute Senate Bill No. 5575 be substituted therefor, and the substitute bill do pass.

Signed by Senators Winsley, Chair; Benton, Vice Chair; Finkbeiner, Hale, Heavey and Kline.

Staff: Catherine Mele (786-7470)

Background: Generally, a mortgage broker acts as an intermediary between a lender and a borrower. Mortgage brokers usually work with many lenders to find a loan which is most suitable to a borrower.

The Legislature established a mortgage broker licensing program in 1994. Mortgage brokers are required to possess a license issued by the state Department of Financial Institutions (DFI). In the 1994 bill, the Legislature established a five-member Mortgage Brokerage Commission to advise DFI on issues concerning the industry. The bill required the DFI, in collaboration with the commission, to make recommendations for changes in the mortgage broker licensing statute, and to report these recommendations to the Legislature by December 1996.

During the last year, the commission held public hearings and worked in cooperation with the Department of Financial Institutions, the office of the Attorney General, and the Association of Mortgage Brokers to develop several recommendations for statutory changes.

Summary of Substitute Bill: Several changes are made to the mortgage broker licensing statute.

The requirement that licensed mortgage brokers include the term "licensed mortgage broker" in any advertising directed at the general public is removed.

Changes are made to make the time limits consistent with federal law for when a mortgage broker must make disclosures about fees and costs to the consumer. A mortgage broker is

permitted to make disclosures within three days of receiving a loan application or any money from the borrower, as opposed to making disclosures upon receipt of a loan application and before receipt of any money.

Mortgage brokers are required to disclose to borrowers whether and under what conditions lock-in fees are refundable to the borrower.

Mortgage brokers must keep their books available at their usual place of business for 25 months instead of four years from the closing of a loan. If a mortgage broker's usual place of business is outside of Washington, the mortgage broker must keep the books in Washington, or pay expenses for the Department of Financial Institutions (DFI) to travel to examine the books.

Changes are made to the licensing requirements for mortgage brokers. A branch manager does not have to apply for a license if a designated broker supervising the branch has a license.

The director is permitted to exchange the designated broker's fingerprint data with the Federal Bureau of Investigation.

DFI is not authorized to charge investigative fees to a mortgage broker for the processing of complaints when the investigation determines that no violation of the licensing law occurred, or if the mortgage broker satisfies the consumer and the director with a remedy and the director does not issue an order. DFI is also authorized to issue subpoenas when conducting examinations or investigations if the mortgage broker does not comply with an order to provide information related to the examination or investigation.

The surety bond, of an amount not greater than \$60,000 and not less than \$20,000, is changed to a two-tiered system. In the distribution of the surety bond, borrowers are given first priority. The state and all other third parties may then receive distribution from the remainder of the bond. On non-borrower claims against the surety bond, no final judgment may be entered prior to 180 days following the date the claim is filed.

The requirement that a licensed mortgage broker have an office in Washington is deleted. For mortgage brokers who do not have offices in Washington, court actions are to take place in Thurston County.

The Mortgage Brokerage Commission may establish a code of conduct for its members. Any commissioner may bring a motion before the commission to remove a commissioner for failing to follow the code of conduct.

Substitute Bill Compared to Original Bill: The substitute bill makes technical corrections. The substitute bill authorizes the Director of the Department of Financial Institutions to issue subpoenas when conducting an examination or investigation if the mortgage broker does not comply with an order to provide information related to the examination or investigation. A two-tiered surety bond is created. In the distribution of the surety bond, borrowers are given first priority. The state and other third parties may then receive distribution from the remainder of the bond. On non-borrower claims against the surety bond, no final judgment may be entered prior to 180 days following the date the claim is filed.

Appropriation: None.

Fiscal Note: Requested on February 4, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Over the last year, the Department of Financial Institutions, the Mortgage Brokerage Commission, and representatives of the industry held discussions to make recommendations for changes to the Mortgage Brokerage Practices Act. This legislation is a compromise between all parties. This bill limits collection on the surety bond to borrowers and the state of Washington. This limit assures that the surety bond runs to the benefit of injured borrowers, as opposed to third party service providers that are sophisticated business persons.

Testimony Against: The mortgage brokers that are here today are probably the best in the state of Washington. However, there are many bad actors in the mortgage brokerage business. Once the mortgage broker's trust account vanishes, we lose money and must be able to recover on the bond. In 1994, we testified before this committee, and that is the reason that we currently have the ability to recover against the bond. Appraisers and credit reporting companies are small businesses, and need the protection of the bond.

Testified: PRO: Jim Fitzgerald, Emerald Financial Services; Jane Hostuedt, Puget Sound Mortgage; Jim Hruza, Citizen's Mortgage; Scott Nelson, WA Association of Mortgage Brokers; CON: Jim Tesso, Appraisers Coalition of Washington; Gary Ga. Walker, Appraiser Coalition; Jim Dillon, Appraiser Coalition of Washington; Richard Hagar; Jim Irish, Appraiser Coalition; Mark Thomsen, DFI.