
**Insurance, Financial Services &
Consumer Protection Committee**

SB 6381

Brief Description: Establishing fiduciary duties for mortgage brokers.

Sponsors: Senators Weinstein, Kauffman, Tom, Fairley, McAuliffe, Kohl-Welles, Kline and Murray.

Brief Summary of Bill

- Establishes a fiduciary duty that is owed by a mortgage broker to a borrower.

Hearing Date:

Staff: Jon Hedegard (786-7127).

Background:

The Department of Financial Institutions (DFI) licenses mortgage brokers and loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties.

The MBPA has specific provisions regarding money received from a borrower. All money received by a mortgage broker from a borrower for payment of third-party provider services must be held in trust by the mortgage broker. Moneys maintained in a trust account is exempt from execution, attachment, or garnishment. A mortgage broker must not encumber the trust account or commingle any other operating funds with trust account funds. Withdrawals from a trust account must be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. Interest earned on the trust account must be refunded or credited to the borrowers at closing. A person violating these provisions is guilty of a class C felony.

"Third-party provider" is defined as any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the

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borrower's loan. "Third-party provider" includes credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies.

Summary of Bill:

A mortgage broker has a fiduciary relationship with the borrower. A mortgage broker is subject to all requirements for fiduciaries applicable under state law. A mortgage broker's fiduciary duties include the following:

- a mortgage broker must act in the borrower's best interest and in the utmost good faith toward the borrower;
- a mortgage broker must not compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker;
- a mortgage broker must not accept, provide, or charge any undisclosed compensation or realize any undisclosed benefits;
- a mortgage broker must carry out all lawful instructions provided by the borrower;
- a mortgage broker must disclose all known material facts that might reasonably affect a borrower's rights, interests, or ability to receive an intended benefit;
- a mortgage broker must use reasonable care in performing duties; and
- a mortgage broker must provide the borrower with an accounting of all money and property received from the borrower.

A mortgage broker may receive a fee for the provision of services if the fee is disclosed to the borrower before those services are provided.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.