

for students nineteen years of age or older who are eligible for resident tuition and fee rates as defined in RCW 28B.15.012 through 28B.15.015 and who enroll in a course of study or program which will enable them to finish their high school education and obtain a high school diploma or certificate, and (2) the various community college boards may waive the tuition and services and activities fees for children after the age of nineteen years of any law enforcement officer or fire fighter who lost his life or became totally disabled in the line of duty while employed by any public law enforcement agency or full time or volunteer fire department in this state.

(3) Boards of trustees of the various community colleges may waive residency requirements for students enrolled in that community college in a course of study or program which will enable them to finish their high school education and obtain a high school diploma or certificate. The waiver shall be in effect only for those courses which lead to a high school diploma or certificate.

(4) Boards of trustees of the various community colleges may waive the nonresident portion of tuition and fees for up to forty percent of the students enrolled in the regional education program for deaf students, subject to federal funding of such program.

Passed the Senate April 26, 1987.

Passed the House April 25, 1987.

Approved by the Governor May 15, 1987.

Filed in Office of Secretary of State May 15, 1987.

CHAPTER 391

[Engrossed Substitute House Bill No. 80] MORTGAGE BROKER PRACTICES ACT

AN ACT Relating to mortgage brokers; adding a new chapter to Title 19 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish rules of practice and conduct of mortgage brokers to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

NEW SECTION. Sec. 2. This act shall be known and cited as the "mortgage broker practices act."

NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Mortgage broker" means every person who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates, or offers to make or negotiate a residential mortgage loan.

(3) "Person" means a natural person, corporation, company, partnership, or association.

(4) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

(5) "Third-party provider" means 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 borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

NEW SECTION. Sec. 4. The following are exempt from all provisions of this chapter:

(1) Any person doing business under the laws of this state or the United States relating to banks, bank holding companies, mutual savings banks, trust companies, savings and loan associations, credit unions, consumer finance companies, industrial loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(2) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(3) Any person doing any act under order of any court;

(4) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

(5) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(6) Any mortgage broker approved and subject to auditing by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation;

(7) Any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance

program under the National Housing Act, 12 U.S.C. Sec. 1701, as now or hereafter amended; and

(8) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection.

NEW SECTION. Sec. 5. Upon receipt of a loan application and before the receipt of any moneys from a borrower, a mortgage broker shall make a full written disclosure to each borrower containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. The written disclosure shall contain the following information:

(1) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(2) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(3) If applicable, the cost, terms, and conditions of an agreement to lock-in or commit the mortgage broker or lender to a specific interest rate or other financing term for any period of time up to and including the time the loan is closed;

(4) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(5) The name of the lender and the nature of the business relationship between the lender and the mortgage broker, if any: PROVIDED, That this disclosure may be made at any time up to the time the borrower accepts the lender's commitment; and

(6) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

A violation of the Truth-in-Lending Act, Regulation Z, the Real Estate Settlement Procedures Act, and Regulation X is a violation of this section for purposes of this chapter.

NEW SECTION. Sec. 6. Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public.

NEW SECTION. Sec. 7. A mortgage broker shall deposit, prior to the end of the next business day, all moneys received from borrowers for third-party provider services in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing.

NEW SECTION. Sec. 8. A mortgage broker shall use generally accepted accounting principles. A mortgage broker shall maintain accurate, current, and readily available books and records at the mortgage broker's usual business location until at least six years have elapsed following the effective period to which the books and records relate.

NEW SECTION. Sec. 9. (1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed

upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

(3) A mortgage broker may not:

(a) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower; or

(b) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.

NEW SECTION. Sec. 10. If a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. The mortgage broker must provide the copies or transmit the documents within five days after the borrower has made the request in writing.

NEW SECTION. Sec. 11. All advertising of residential mortgage loans by a mortgage broker shall comply with the requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended. A violation of the Truth-in-Lending Act or Regulation Z is a violation of this section for purposes of this chapter.

NEW SECTION. Sec. 12. The commission by any person of any violation of this chapter is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020.

NEW SECTION. Sec. 13. Any person who violates any provision of sections 1 through 6 or 8 through 12 of this act shall be guilty of a misdemeanor punishable under chapter 9A.20 RCW. Any person who violates section 7 of this act shall be guilty of a class C felony under chapter 9A.20 RCW.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act shall constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 21, 1987.

Passed the Senate April 15, 1987.

Approved by the Governor May 15, 1987.

Filed in Office of Secretary of State May 15, 1987.

CHAPTER 392

[House Bill No. 629]

VESSEL PILOTS—DISCIPLINE MODIFIED

AN ACT Relating to discipline of state licensed pilots; and amending RCW 88.16.100.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 13, chapter 18, Laws of 1935 as last amended by section 1, chapter 121, Laws of 1986 and RCW 88.16.100 are each amended to read as follows:

(1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the performance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars (~~and~~), suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(2) In all instances where a pilot licensed under this chapter performs pilot services on a vessel exempt under RCW 88.16.070, the board may on its own motion, or in its discretion upon the written request of any interested party, investigate whether the services were performed in a professional manner consistent with sound maritime practices. ~~((If the board finds that the pilotage services were performed in a negligent manner so as to endanger life, limb, or property, the board shall impose a fine of not more than five thousand dollars upon the offending pilot.))~~ If the board finds that the pilotage services were performed in a manner that constitutes an act of incompetence, misconduct, or negligence so as to endanger life, limb, or