

1 SENATE BILL NO. 117

2 INTRODUCED BY COCCHIARELLA

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MORTGAGE BROKER LAWS; MODIFYING THE
6 DEFINITION OF "MORTGAGE BROKER" TO INCLUDE A PERSON WHO LOANS MONEY THAT IS NOT
7 SECURED BY PROPERTY PURCHASED WITH THE LOAN PROCEEDS; INCREASING FROM 5 PERCENT
8 TO 10 PERCENT THE OWNERSHIP INTEREST IN A MORTGAGE BROKER ENTITY A PERSON MUST HAVE
9 BEFORE THAT OWNERSHIP INTEREST MUST BE REPORTED TO THE DEPARTMENT OF
10 ADMINISTRATION; REVISING INFORMATION INCLUDED IN ADVERTISING; AUTHORIZING THE
11 DEPARTMENT TO SHARE INFORMATION WITH OTHER STATE REGULATORY AGENCIES AND THE
12 MORTGAGE ASSET RESEARCH INSTITUTE, INC., AND OTHER SIMILAR ORGANIZATIONS; AND
13 AMENDING SECTIONS 32-9-103, 32-9-115, 32-9-121, AND 32-9-130, MCA."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **Section 1.** Section 32-9-103, MCA, is amended to read:18 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

19 (1) "Bona fide third party" means a person or entity that provides services relative to residential
20 mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting
21 agencies.

22 (2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a
23 mortgage broker for other than commercial mortgage lending.

24 (3) "Department" means the department of administration provided for in 2-15-1001, acting through its
25 division of banking and financial institutions.

26 (4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole
27 proprietorship, as the person responsible for operating the business at the location where the person is
28 employed. A designated manager must be licensed as a mortgage broker.

29 (5) "Entity" means a business organization, other than a sole proprietorship or an individual person, that
30 provides mortgage broker services.

1 (6) "Lender" means an entity that funds or services a residential mortgage loan.

2 (7) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers
3 by originating a residential loan.

4 (8) "Mortgage" means a consensual interest in real property located in Montana, including
5 improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real
6 property.

7 (9) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans
8 and that may be required to submit audited financial statements to the United States department of housing and
9 urban development, the United States department of veterans affairs, the federal national mortgage association,
10 the federal home loan mortgage corporation, or the government national mortgage association.

11 (10) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary
12 between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential
13 dwelling for between one and four families ~~located on real property purchased by the borrower with the loan~~
14 ~~provided by the lender.~~

15 (11) "Originate" means:

16 (a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and
17 a person or entity that makes or funds mortgage loans;

18 (b) to issue a commitment for a mortgage loan to a borrower; or

19 (c) to place, assist in placing, or find a mortgage loan for a borrower.

20 (12) "Trust account" means a depository account with a financial institution that provides deposit
21 insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and
22 that is maintained solely for the holding and payment of bona fide third-party fees."
23

24 **Section 2.** Section 32-9-115, MCA, is amended to read:

25 **"32-9-115. Application for mortgage broker license.** (1) An application for a mortgage broker license
26 must include:

27 (a) the proposed location of the business, with a photograph of each location at which business will be
28 transacted. If the business is to be conducted out of a residence, verification must be supplied concerning
29 compliance with all zoning laws and regulations.

30 (b) (i) the name and address of the sole proprietor;

- 1 (ii) the name and address of each partner; or
- 2 (iii) the name and address of any person that owns 5% 10% or more of a mortgage broker entity that
- 3 is other than a sole proprietorship or partnership;
- 4 (c) evidence of an irrevocable letter of credit or surety bond required by 32-9-123;
- 5 (d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder,
- 6 member, partner, designated manager, or employee of the applicant is currently under investigation, has been
- 7 convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been
- 8 subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and
- 9 (e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.
- 10 (2) The department shall investigate each individual applicant. The investigation shall include a criminal
- 11 records check based on the fingerprints of each individual applicant and a civil records check. The department
- 12 shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement
- 13 agency, and any other information necessary to complete a statewide and nationwide criminal check with the
- 14 criminal investigation bureau of the department of justice for state processing and with the federal bureau of
- 15 investigation for federal processing. All costs associated with the criminal history check are the responsibility of
- 16 the applicant. Criminal history records provided to the department under this section are confidential, and the
- 17 department may use the records only to determine if the applicant is eligible for licensure. If an investigation
- 18 outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the
- 19 actual expenses of the investigation. The department may deny the application if the applicant's criminal history
- 20 demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant
- 21 has had any adverse civil judgments involving fraudulent or dishonest dealings."

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23 **SECTION 3. SECTION 32-9-121, MCA, IS AMENDED TO READ:**

24 **"32-9-121. In-state office requirement -- records maintenance -- advertising requirement.** (1) A

25 person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state

26 either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in

27 this state. Licensees shall maintain copies of residential mortgage loan files and trust account records at the

28 Montana office location where services are provided. Each office location must have at least one phone line.

29 Licensees shall pay state income tax on all income earned in Montana.

30 (2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date

1 of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum
2 of 5 years.

3 (3) ~~(a) A licensee or licensed entity shall disclose in~~ In any printed, published, televised, e-mail, or
4 internet advertisement for the provision of services, the following information must be included:

5 (i) a name, address, and license number for each mortgage broker or loan originator advertising as an
6 individual; or

7 ~~(ii) the name and address of the licensee and the number designated on the license issued to the~~
8 ~~licensee or licensed entity by the department~~ the name, address, and license number only of the licensed entity
9 when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers or
10 loan originators also listed.

11 (b) For the purposes of this subsection (3), advertising does not include stationery or business forms
12 but does include business cards. A business card must include a mortgage broker's or loan originator's license
13 number but is not required to list the entity's license number if the entity's name is listed."

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15 **Section 4.** Section 32-9-130, MCA, is amended to read:

16 **"32-9-130. Department authority -- rulemaking.** (1) The department shall adopt rules necessary to
17 carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable
18 through the power of suspension or revocation of licenses.

19 (2) The rules must address:

20 (a) revocation or suspension of licenses for cause;

21 (b) investigation of applicants and licensees and handling of complaints made by any person in
22 connection with any business transacted by a licensee;

23 (c) prescribing forms for applications;

24 (d) developing or approving tests to be given as a prerequisite for licensure;

25 (e) approval of programs for continuing education; and

26 (f) establishing fees for testing, continuing education programs, and license renewals.

27 (3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any
28 act or practice violating any provision of this part.

29 (4) (a) The department may at any time examine any mortgage broker transaction and may examine
30 the residential mortgage loan files, trust account records, and other information related to mortgage loan

1 transactions of a licensee.

2 (b) When conducting a financial examination or an audit of a licensee, the department may require the
3 licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

4 (c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the
5 license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or
6 revoked.

7 (5) (a) The department may:

8 (i) exchange information with federal and state regulatory agencies, the attorney general, the consumer
9 protection office of the department, and the legislative auditor; and

10 (ii) exchange information other than confidential ~~criminal~~ information with the mortgage asset research
11 institute, inc., and other similar organizations.

12 (b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice
13 information as confidential unless otherwise required by law.

14 (6) The department shall prepare, at least once each calendar year, a roster listing the name and
15 locations for each mortgage broker and a roster of all loan originators and designated managers and the name
16 of their employing brokers."

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