



AN ACT PROVIDING THAT A STATE BANK, CREDIT UNION, OR MORTGAGE LENDER MAY NOT REQUIRE A BORROWER, AS A CONDITION OF OBTAINING OR MAINTAINING A LOAN SECURED BY REAL PROPERTY, TO PROVIDE INSURANCE ON IMPROVEMENTS TO REAL PROPERTY IN AN AMOUNT THAT EXCEEDS THE REASONABLE REPLACEMENT VALUE OF THE IMPROVEMENTS; AND AMENDING SECTIONS 32-1-430, 32-3-604, AND 32-10-401, MCA.

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

**Section 1.** Section 32-1-430, MCA, is amended to read:

**"32-1-430. Authority of state banks to make real estate loans -- borrower insurance requirements.**

(1) A bank in this state has ~~from time to time~~ the same authority to make loans upon real estate ~~which may be that is~~ given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

(2) A bank that is subject to this section may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

**Section 2.** Section 32-3-604, MCA, is amended to read:

**"32-3-604. Security -- real property loans.** (1) In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor or pledge of shares, in a manner consistent with the laws of this state, must be considered security within the meaning of this chapter. The adequacy of any security is subject to the lending policies established by the board of directors.

(2) A credit union that is subject to the provisions of this part may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

**Section 3.** Section 32-10-401, MCA, is amended to read:

**"32-10-401. Prohibited practices.** It is unlawful for any person to:

- (1) provide or offer to provide any service requiring a license unless the person has been issued the appropriate license or is exempt from licensure;
- (2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:
  - (a) direct deposit to a borrower's account;
  - (b) wire;
  - (c) bank or certified check;
  - (d) attorney's check drawn on a trust account; or
  - (e) other form as specifically authorized by applicable law;
- (3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;
- (4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;
- (5) accept any fees at closing that were not disclosed as required by law;
- (6) retain third-party fees at closing in excess of the actual cost of third-party services;
- (7) require the borrower to be represented by a third-party service provider except under the terms permitted by applicable federal law;
- (8) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;
- (9) obtain any agreement or instrument in which blanks are left to be filled in after execution;
- (10) obtain any exclusive dealing or exclusive agency agreement from any borrower;
- (11) delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (12) engage in unfair, deceptive, or fraudulent mortgage loan practices;
- (13) make payment of any kind, whether directly or indirectly, to any appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property that is to be mortgaged;
- (14) make any misrepresentations or false promises likely to influence or persuade or pursue a course

of misrepresentation and false promises through officers, directors, partners, trustees, independent contractors, employees, agents, advertising, or otherwise;

(15) misrepresent, circumvent, or conceal, through any subterfuge or device, any of the material facts or terms of a mortgage loan;

(16) act as a mortgage lender in this state without a license issued by the department;

(17) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(18) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(19) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants;

(20) falsely advertise or misuse names in violation of 18 U.S.C. 709; ~~or~~

(21) make any untrue statement of a material fact in any document filed with the department or to omit any material fact that is required to be stated in any document; or

(22) require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

- END -

I hereby certify that the within bill,  
SB 0375, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

SENATE BILL NO. 375

INTRODUCED BY J. PETERSON

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