

HOUSE BILL ANALYSIS

HB 2620

Title: An act relating to mortgage brokers.

Brief Description: Regarding fiduciary duties of mortgage brokers.

Sponsors: Representatives Sullivan, Conway, Dickerson, Ogden and Regala.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Meeting Date: January 28, 198

Bill Analysis Prepared by: Charlie Gavigan, Counsel (786-7340)

Background: Generally, a mortgage broker acts as an intermediary between a lender and a borrower. Mortgage brokers often work with many lenders to find a loan which is most suitable to a borrower, although some work exclusively with one lender. Mortgage brokers can work for the borrower as an agent, or, as is more common, can market mortgage loans to borrowers like any other mortgage lender and do not represent the borrower. Mortgage brokers typically are compensated directly through fees paid by the borrower, indirectly through fees paid by the lender providing the mortgage loan funds, or both.

The Legislature adopted a temporary Mortgage Broker Licensing Program during the 1993 session. In 1994 the Legislature made the temporary licensing program permanent within the Department of Financial Institutions. In 1996, the Legislature modified the regulation of mortgage brokers. For instance, disclosure requirements for mortgage brokers were changes as follows: (1) disclosure of rates, fees, and other costs, including the annual percentage rate, must be made within three days of taking the application; (2) disclosure requirements regarding the relationship between the mortgage broker and the lender making the residential loan were removed; and (3) disclosure must be made regarding whether, and under what conditions, lock-in fees are refundable to the borrower. Other changes were also made to the regulation of mortgage brokers.

Under Washington law, mortgage brokers are not required to disclose to the borrower the distribution or breakdown of loan fees, discounts, or points between the broker and the lender providing the mortgage loan funds. Federal law generally requires the disclosure of fees imposed on borrowers for a residential loan, and generally prohibits referral fees paid by lenders to mortgage settlement service providers for loan referrals.

The Department of Housing and Urban Development is considering a rule to modify federal regulations applicable to mortgage brokers. This rule would provide a safe harbor under the Real Estate Settlement Procedures Act (RESPA) for direct and indirect fees received by mortgage brokers from lenders (these fees would be presumed to be legal) if the fees did not exceed a certain limit and if certain other requirements were met by the broker, including certain fee disclosures and disclosure of the relationship between the mortgage broker and the borrower.

Summary of Bill: A mortgage broker has a duty of due diligence in providing mortgage services to borrowers. A mortgage broker who violates this duty to use due diligence also violates the Consumer Protection Act.

Mortgage brokers must disclose the distribution or breakdown of loan fees, discounts, or points between the broker and the lender or investor providing the mortgage loan funds.

Appropriation: None.

Fiscal Note: Not Requested.

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

Rulemaking Authority: None Specified.