

# FINAL BILL REPORT

## SB 6381

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Synopsis as Enacted

**Brief Description:** Establishing fiduciary duties for mortgage brokers.

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

**Senate Committee on Consumer Protection & Housing**  
**House Committee on Insurance, Financial Services & Consumer Protection**

**Background:** The relationship between mortgage brokers and borrowers is governed by the Mortgage Brokers Practices Act (MBPA). Under the MBPA, a mortgage broker's legal relationship with a borrower is defined solely by contract.

A fiduciary duty may be created through statute, contract, or through two parties' legal relationship with each other. A court may also declare that a fiduciary duty is owed when a person has encouraged another to put special confidence and trust in him or her. The general fiduciary duties are loyalty, care, and full disclosure. A breach of a fiduciary duty is an intentional tort and is sufficient grounds to cancel a contract.

**Summary:** Mortgage brokers have a fiduciary duty to borrowers. The fiduciary duties owed are acting in the borrower's best interest, good faith, disclosing all other interests to the borrower, refusing to accept undisclosed compensation for an expense paid by the borrower, following the borrower's instructions, disclosure of all material facts that could impact the borrower's interests, using reasonable care, and providing an accounting to the borrower for all money and property received from the borrower.

The fiduciary duty owed does not require the mortgage broker to obtain access to a loan product that is not available to the broker at the time of the transaction with the borrower.

Mortgage brokers may collect a fee for services if the fee is disclosed to the borrower before the services are provided.

The Department of Financial Institutions must adopt rules to implement this section.

**Votes on Final Passage:**

Senate	29	19	
House	93	0	(House amended)
Senate	35	9	(Senate concurred)

**Effective:** June 12, 2008.