
SENATE BILL 5858

State of Washington

61st Legislature

2009 Regular Session

By Senators Tom and Kline

Read first time 02/04/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to prohibiting the payment of yield spread premiums
2 to mortgage brokers; and amending RCW 19.146.010 and 19.146.070.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.146.010 and 2008 c 78 s 3 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

11 (2) "Application" means the same as in Regulation X, Real Estate
12 Settlement Procedures, 24 C.F.R. Sec. 3500.

13 (3) "Borrower" means any person who consults with or retains a
14 mortgage broker or loan originator in an effort to obtain or seek
15 advice or information on obtaining or applying to obtain a residential
16 mortgage loan for himself, herself, or persons including himself or
17 herself, regardless of whether the person actually obtains such a loan.

18 (4) "Computer loan information systems" or "CLI system" means a
19 real estate mortgage financing information system that facilitates the

1 provision of information to consumers by a mortgage broker, loan
2 originator, lender, real estate agent, or other person regarding
3 interest rates and other loan terms available from different lenders.

4 (5) "Department" means the department of financial institutions.

5 (6) "Designated broker" means a natural person designated as the
6 person responsible for activities of the licensed mortgage broker in
7 conducting the business of a mortgage broker under this chapter and who
8 meets the experience and examination requirements set forth in RCW
9 19.146.210(1)(e).

10 (7) "Director" means the director of financial institutions.

11 (8) "Employee" means an individual who has an employment
12 relationship with a mortgage broker, and the individual is treated as
13 an employee by the mortgage broker for purposes of compliance with
14 federal income tax laws.

15 (9) "Independent contractor" or "person who independently
16 contracts" means any person that expressly or impliedly contracts to
17 perform mortgage brokering services for another and that with respect
18 to its manner or means of performing the services is not subject to the
19 other's right of control, and that is not treated as an employee by the
20 other for purposes of compliance with federal income tax laws.

21 (10) "Loan originator" means a natural person who (a) takes a
22 residential mortgage loan application for a mortgage broker, or (b)
23 offers or negotiates terms of a mortgage loan, for direct or indirect
24 compensation or gain, or in the expectation of direct or indirect
25 compensation or gain. "Loan originator" also includes a person who
26 holds themselves out to the public as able to perform any of these
27 activities. "Loan originator" does not mean persons performing purely
28 administrative or clerical tasks for a mortgage broker. For the
29 purposes of this subsection, "administrative or clerical tasks" means
30 the receipt, collection, and distribution of information common for the
31 processing of a loan in the mortgage industry and communication with a
32 borrower to obtain information necessary for the processing of a loan.
33 A person who holds himself or herself out to the public as able to
34 obtain a loan is not performing administrative or clerical tasks.

35 (11) "Lock-in agreement" means an agreement with a borrower made by
36 a mortgage broker or loan originator, in which the mortgage broker or
37 loan originator agrees that, for a period of time, a specific interest

1 rate or other financing terms will be the rate or terms at which it
2 will make a loan available to that borrower.

3 (12) "Mortgage broker" means any person who for compensation or
4 gain, or in the expectation of compensation or gain (a) assists a
5 person in obtaining or applying to obtain a residential mortgage loan
6 or (b) holds himself or herself out as being able to assist a person in
7 obtaining or applying to obtain a residential mortgage loan.

8 (13) "Person" means a natural person, corporation, company, limited
9 liability corporation, partnership, or association.

10 (14) "Principal" means any person who controls, directly or
11 indirectly through one or more intermediaries, or alone or in concert
12 with others, a ten percent or greater interest in a partnership,
13 company, association, or corporation, and the owner of a sole
14 proprietorship.

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

20 (16) "Third-party provider" means any person other than a mortgage
21 broker or lender who provides goods or services to the mortgage broker
22 in connection with the preparation of the borrower's loan and includes,
23 but is not limited to, credit reporting agencies, title companies,
24 appraisers, structural and pest inspectors, or escrow companies.

25 (17) "Yield spread premium" means a direct payment by the lender to
26 the mortgage broker that is based on the difference between the
27 interest rate at which the broker originates the residential mortgage
28 loan and the wholesale par rate for which the borrower qualifies.

29 **Sec. 2.** RCW 19.146.070 and 2006 c 19 s 8 are each amended to read
30 as follows:

31 (1) Except as otherwise permitted by this section, a mortgage
32 broker shall not receive a fee, commission, or compensation of any kind
33 in connection with the preparation, negotiation, and brokering of a
34 residential mortgage loan unless a borrower actually obtains a loan
35 from a lender on the terms and conditions agreed upon by the borrower
36 and mortgage broker. A loan originator may not accept a fee,

1 commission, or compensation of any kind from borrowers in connection
2 with the preparation, negotiation, and brokering of a residential
3 mortgage loan.

4 (2) A mortgage broker may:

5 (a) If the mortgage broker has obtained for the borrower a written
6 commitment from a lender for a loan on the terms and conditions agreed
7 upon by the borrower and the mortgage broker, and the borrower fails to
8 close on the loan through no fault of the mortgage broker, charge a fee
9 not to exceed three hundred dollars for services rendered, preparation
10 of documents, or transfer of documents in the borrower's file which
11 were prepared or paid for by the borrower if the fee is not otherwise
12 prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and
13 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

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

19 (3) A loan originator may not solicit or receive fees for a third-
20 party provider of goods or services except that a loan originator may
21 transfer funds from a borrower to a licensed mortgage broker, exempt
22 mortgage broker, or third-party provider, if the loan originator does
23 not deposit, hold, retain, or use the funds for any purpose other than
24 the payment of bona fide fees to third-party providers.

25 (4) A mortgage broker may not receive a yield spread premium
26 payment prior to or after the closing of a residential mortgage loan.

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