

REFERENCE TITLE: homeowner protection; mortgage broker duties

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2517

Introduced by
Representatives Ableser, Chabin, Sinema: Alvarez, Bradley, Cajero Bedford,
Campbell CH, Campbell CL, Gallardo, Lopez, Meza, Rios P, Schapira, Tobin

AN ACT

AMENDING SECTION 6-909, ARIZONA REVISED STATUTES; RELATING TO MORTGAGE
BROKERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-909, Arizona Revised Statutes, is amended to
3 read:

4 6-909. Prohibited acts

5 A. Except for employment verifications, verifications of mortgages and
6 loans, and deposit or account verifications, a person, in connection with or
7 incidental to the making of any mortgage loan, shall not induce, require or
8 permit any document to be signed by a party to the transaction if such
9 document contains any blank spaces to be filled in after it has been signed,
10 except that the party may specifically authorize the licensee or the escrow
11 agent handling the transaction, in writing, to complete certain blank spaces.

12 B. A person is not entitled to receive compensation in connection with
13 arranging for or negotiating a mortgage loan if such person is not licensed
14 pursuant to this article. A mortgage broker shall not pay compensation to,
15 contract with or employ as an independent contractor a person who is acting
16 as a mortgage broker or mortgage banker but who is not licensed under this
17 chapter.

18 C. A person engaged in the mortgage business shall not knowingly
19 advertise, display, distribute, broadcast or televise, or cause or permit to
20 be advertised, displayed, distributed, broadcast or televised, in any manner
21 whatever, any false, misleading or deceptive statement or representation with
22 regard to the rates, terms or conditions for a mortgage loan. The charges or
23 rates of charge, if stated, shall be set forth in such manner as to prevent
24 misunderstanding by prospective borrowers.

25 D. A mortgage broker shall not request or require a person seeking a
26 mortgage loan on real property designed principally for the occupancy of from
27 one to four families in an amount of two hundred thousand dollars or less to
28 enter into an agreement ~~which~~ THAT prohibits the person from seeking the loan
29 from another source.

30 E. A mortgage broker shall not, except in good faith, delay or cause
31 delay in the closing of a loan that results in increased costs to a borrower.

32 F. A mortgage broker shall not record or cause to be recorded any
33 document ~~which~~ THAT would give rise to liability under section 33-420.

34 G. A mortgage broker shall not, for compensation, either directly or
35 indirectly make or negotiate or offer to make or negotiate a loan that is
36 either:

- 37 1. Less than five thousand dollars.
- 38 2. Not secured by a mortgage or deed of trust or other lien interest
39 in real property.

40 H. A person who is employed by a licensee to act in the capacity of a
41 mortgage broker shall not be concurrently employed by any other licensee to
42 act as a mortgage broker, except with the prior written approval of all the
43 concurrently employing licensees.

1 I. A mortgage broker shall not collect compensation for rendering
2 services as a real estate broker or real estate salesman unless both of the
3 following apply:

4 1. The mortgage broker is licensed pursuant to title 32, chapter 20.

5 2. The mortgage broker has disclosed to the person from whom the
6 compensation is collected that the mortgage broker is receiving compensation
7 both for mortgage broker services, if applicable, and for real estate broker
8 or real estate salesman services.

9 J. A licensee shall not accept any assignment of the borrower's wages
10 or salary in connection with activities governed by this article.

11 K. A mortgage broker shall not receive or disburse monies in servicing
12 or arranging a mortgage loan except as provided in section 6-906,
13 subsection C.

14 L. A mortgage broker shall not make a false promise or
15 misrepresentation or conceal an essential or material fact in the course of
16 the mortgage broker business.

17 M. A mortgage broker shall not fail to truthfully account for the
18 monies belonging to a party to a mortgage loan transaction or fail to
19 disburse monies in accordance with ~~his~~ THE MORTGAGE BROKER'S agreements.

20 N. A mortgage broker shall not engage in illegal or improper business
21 practices.

22 O. A mortgage broker shall not record a mortgage or deed of trust if
23 monies are not available for the immediate disbursement to the mortgagor unless,
24 before that recording, the mortgage broker informs the mortgagor in writing
25 of a definite date by which payment shall be made and obtains the mortgagor's
26 written permission for the delay.

27 P. A mortgage broker shall not require a person seeking a loan secured
28 by real property to obtain property insurance coverage in an amount that
29 exceeds the replacement cost of the improvements as established by the
30 property insurer.

31 Q. A MORTGAGE BROKER SHALL NOT:

32 1. MAKE, PROVIDE OR ARRANGE FOR A RESIDENTIAL MORTGAGE LOAN WITHOUT
33 VERIFYING THE BORROWER'S REASONABLE ABILITY TO PAY THE SCHEDULED PAYMENTS OF
34 PRINCIPAL, INTEREST, REAL ESTATE TAXES, HOMEOWNER'S INSURANCE, ASSESSMENTS
35 AND MORTGAGE INSURANCE PREMIUMS, AS APPLICABLE. FOR LOANS WITH AN INTEREST
36 RATE THAT MAY VARY, THE REASONABLE ABILITY TO PAY SHALL BE DETERMINED BASED
37 ON A FULLY INDEXED RATE AND A REPAYMENT SCHEDULE THAT ACHIEVES FULL
38 AMORTIZATION OVER THE LIFE OF THE LOAN. FOR ALL RESIDENTIAL MORTGAGE LOANS,
39 THE BORROWER'S INCOME AND FINANCIAL RESOURCES MUST BE VERIFIED BY TAX
40 RETURNS, PAYROLL RECEIPTS, BANK RECORDS OR OTHER SIMILARLY RELIABLE
41 DOCUMENTS.

42 2. ENGAGE IN CHURNING. FOR THE PURPOSES OF THIS PARAGRAPH, "CHURNING"
43 MEANS KNOWINGLY OR INTENTIONALLY MAKING, PROVIDING OR ARRANGING FOR A
44 RESIDENTIAL MORTGAGE LOAN WHEN THE NEW RESIDENTIAL MORTGAGE LOAN DOES NOT
45 PROVIDE A REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER CONSIDERING ALL OF

1 THE CIRCUMSTANCES, INCLUDING THE TERMS OF BOTH THE NEW AND REFINANCED LOANS,
2 THE COST OF THE NEW LOAN AND THE BORROWER'S CIRCUMSTANCES.

3 3. MAKE OR ASSIST IN MAKING ANY RESIDENTIAL MORTGAGE LOAN WITH THE
4 INTENT THAT THE LOAN WILL NOT BE REPAYED AND THAT THE RESIDENTIAL MORTGAGE
5 BROKER WILL OBTAIN TITLE TO THE PROPERTY THROUGH FORECLOSURE.

6 4. MAKE, PROVIDE OR ARRANGE FOR A RESIDENTIAL MORTGAGE LOAN THAT IS OF
7 A LOWER INVESTMENT GRADE IF THE BORROWER'S CREDIT SCORE OR COMPARABLE
8 UNDERWRITING DATA, IF THE MORTGAGE BROKER DOES NOT USE CREDIT SCORING OR IF A
9 CREDIT SCORE IS UNAVAILABLE, INDICATES THAT THE BORROWER MAY QUALIFY FOR A
10 RESIDENTIAL MORTGAGE LOAN AVAILABLE FROM OR THROUGH THE MORTGAGE BROKER THAT
11 IS OF A HIGHER INVESTMENT GRADE UNLESS THE BORROWER IS INFORMED THAT THE
12 BORROWER MAY QUALIFY FOR A HIGHER INVESTMENT GRADE LOAN WITH A LOWER INTEREST
13 RATE OR LOWER DISCOUNT POINTS OR BOTH A LOWER INTEREST RATE AND LOWER
14 DISCOUNT POINTS AND CONSENTS IN WRITING TO RECEIVE THE LOWER INVESTMENT GRADE
15 LOAN.

16 5. CHARGE A FEE FOR A PRODUCT OR SERVICE IF THE PRODUCT OR SERVICE IS
17 NOT ACTUALLY PROVIDED OR MISREPRESENT THE AMOUNT CHARGED BY OR PAID TO A
18 THIRD PARTY FOR A PRODUCT OR SERVICE.

19 6. COMPENSATE, WHETHER DIRECTLY OR INDIRECTLY, COERCE OR INTIMIDATE AN
20 APPRAISER FOR THE PURPOSE OF INFLUENCING THE INDEPENDENT JUDGMENT OF THE
21 APPRAISER WITH RESPECT TO THE VALUE OF REAL ESTATE THAT IS TO BE COVERED BY A
22 RESIDENTIAL MORTGAGE OR THAT IS BEING OFFERED AS SECURITY ACCORDING TO AN
23 APPLICATION FOR A RESIDENTIAL MORTGAGE LOAN.

24 R. THIS SECTION DOES NOT LIMIT A MORTGAGE BROKER'S OR EXEMPT PERSON'S
25 ABILITY TO RELY ON CRITERIA OTHER THAN THE BORROWER'S INCOME AND FINANCIAL
26 RESOURCES TO ESTABLISH THE BORROWER'S REASONABLE ABILITY TO REPAY A
27 RESIDENTIAL MORTGAGE LOAN, EXCEPT THAT THE OTHER CRITERIA MUST BE VERIFIED
28 THROUGH REASONABLY RELIABLE METHODS AND DOCUMENTATION. A STATEMENT BY THE
29 BORROWER TO THE MORTGAGE BROKER OR EXEMPT PERSON OF THE BORROWER'S INCOME AND
30 RESOURCES IS NOT SUFFICIENT TO ESTABLISH THE EXISTENCE OF THE INCOME OR
31 RESOURCES WHEN VERIFYING THE BORROWER'S REASONABLE ABILITY TO PAY.