



Substitute House Bill No. 7073

Public Act No. 07-118

AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 36a-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Except as provided in subsection (c) of this section, every advance fee paid or given, directly or indirectly, to a mortgage lender or first mortgage broker required to be licensed pursuant to sections 36a-485 to 36a-498a, inclusive, shall be refundable.

(b) No originator required to be registered pursuant to sections 36a-485 to 36a-498a, inclusive, shall accept payment of any advance fee except an advance fee on behalf of a licensee. Nothing in this subsection shall be construed as prohibiting the licensee from paying an originator all or part of an advance fee, provided such advance fee paid is not refundable under this section.

(c) Subsection (a) of this section shall not apply if: (1) The person providing the advance fee and the mortgage lender or first mortgage broker agree in writing that the advance fee shall not be refundable, in whole or in part; and (2) the written agreement complies in all respects with the provisions of subsection (d) of this section.

Substitute House Bill No. 7073

(d) An agreement under subsection (c) of this section shall meet all of the following requirements to be valid and enforceable: (1) The agreement shall be dated, signed by both parties, and be executed prior to the payment of any advance fee; (2) the agreement shall expressly state the total advance fee required to be paid and any amount of the advance fee that shall not be refundable; (3) the agreement shall clearly and conspicuously state any conditions under which the advance fee will be retained by the licensee; (4) the term "nonrefundable" shall be used to describe each advance fee or portion thereof to which the term is applicable, and shall appear in boldface type in the agreement each time it is used; and (5) the form of the agreement shall (A) be separate from any other forms, contracts, or applications utilized by the licensee, (B) contain a heading in a size equal to at least ten-point boldface type that shall title the form "AGREEMENT CONCERNING NONREFUNDABILITY OF ADVANCE FEE", (C) provide for a duplicate copy which shall be given to the person paying the advance fee at the time of payment of the advance fee, and (D) include such other specifications as the commissioner may by regulation prescribe.

(e) An agreement under subsection (c) of this section that does not meet the requirements of subsection (d) of this section shall be voidable at the election of the person paying the advance fee.

(f) (1) No mortgage lender or first mortgage broker required to be licensed pursuant to sections 36a-485 to 36a-498a, inclusive, shall enter into an agreement with or otherwise require any person to pay the mortgage lender or first mortgage broker for any fee, commission or other valuable consideration lost as a result of such person failing to consummate a first mortgage loan, provided the mortgage lender or first mortgage broker may collect such fee, commission or consideration as an advance fee subject to the requirements of this section.

Substitute House Bill No. 7073

(2) No first mortgage broker required to be licensed pursuant to sections 36a-485 to 36a-498a, inclusive, shall enter into an agreement with or otherwise require any person to pay the first mortgage broker any fee, commission or other valuable consideration for the prepayment of the principal of a first mortgage loan by such person before the date on which the principal is due.

(g) (1) For the purposes of this subsection:

(A) "Unfair or deceptive act or practice" means (i) the failure to clearly and conspicuously state in the initial phase of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied, (ii) the failure to clearly and conspicuously state in the initial phase of the solicitation that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied, (iii) the failure in the initial solicitation to comply with the provisions of the federal Fair Credit Reporting Act relating to prescreening solicitations that use consumer reports, including the requirement to make a firm offer of credit to the consumer, or (iv) knowingly or negligently using information from a mortgage trigger lead (I) to solicit consumers who have opted out of prescreened offers of credit under the federal Fair Credit Reporting Act, or (II) to place telephone calls to consumers who have placed their contact information on a federal or state Do Not Call list; and

(B) "Mortgage trigger lead" means a consumer report obtained pursuant to Section 604 (c)(1)(B) of the federal Fair Credit Reporting Act, 15 USC 1681b, where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit. "Mortgage trigger lead" does not include a consumer report obtained by a lender that holds or services existing indebtedness of the applicant who is the subject of the report.

Substitute House Bill No. 7073

(2) No mortgage lender or first mortgage broker shall engage in an unfair or deceptive act or practice in soliciting an application for a first mortgage loan when such solicitation is based, in whole or in part, on information contained in a mortgage trigger lead. Any violation of this subsection shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b.

Sec. 2. Section 36a-521 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) No person engaged in the secondary mortgage loan business in this state as a mortgage lender, or a secondary mortgage broker, including any licensee under sections 36a-510 to 36a-524, inclusive, and any person who is exempt from licensing under section 36a-512, may (1) charge, impose or cause to be paid, directly or indirectly, in connection with any secondary mortgage loan transaction, prepaid finance charges that exceed in the aggregate eight per cent of the principal amount of the loan, or (2) include in the loan agreement under which prepaid finance charges have been assessed any provision which permits the mortgage lender to demand payment of the entire loan balance prior to the scheduled maturity, except that such loan agreement may contain a provision which permits the mortgage lender to demand payment of the entire loan balance if any scheduled installment is in default for more than sixty days or if any condition of default set forth in the mortgage note exists. For the purposes of this section, "prepaid finance charge" has the meaning given to that term in section 36a-746a.

(b) Any mortgage lender who fails to comply with the provisions of this section shall be liable to the borrower in an amount equal to the sum of: (1) The amount by which the total of all prepaid finance charges exceeds eight per cent of the principal amount of the loan; (2) eight per cent of the principal amount of the loan or two thousand five hundred dollars, whichever is less; and (3) the costs incurred by the

Substitute House Bill No. 7073

borrower in bringing an action under this section, including reasonable attorney's fees, as determined by the court, provided no such mortgage lender shall be liable for more than the amount specified in this subsection in a secondary mortgage loan transaction involving more than one borrower.

(c) Except as provided in subsection (e) of this section, every advance fee paid or given, directly or indirectly, to a mortgage lender or secondary mortgage broker required to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, shall be refundable.

(d) No originator required to be registered pursuant to sections 36a-510 to 36a-524, inclusive, shall accept payment of any advance fee except an advance fee on behalf of a licensee. Nothing in this subsection shall be construed as prohibiting the licensee from paying an originator all or part of an advance fee, provided such advance fee paid is not refundable under this section.

(e) Subsection (c) of this section shall not apply if: (1) The person providing the advance fee and the licensee agree, in writing, that the advance fee shall not be refundable, in whole or in part; and (2) the written agreement complies in all respects with the provisions of subsection (f) of this section.

(f) An agreement under subsection (e) of this section shall meet all of the following requirements to be valid and enforceable: (1) The agreement shall be dated, signed by both parties, and be executed prior to the payment of any advance fee; (2) the agreement shall expressly state the total advance fee required to be paid and any amount of the advance fee that shall not be refundable; (3) the agreement shall clearly and conspicuously state any conditions under which the advance fee will be retained by the licensee; (4) the term "nonrefundable" shall be used to describe each advance fee or portion thereof to which the term is applicable and shall appear in boldface

Substitute House Bill No. 7073

type in the agreement each time it is used; and (5) the form of the agreement shall (A) be separate from any other forms, contracts or applications utilized by the licensee, (B) contain a heading printed in a size equal to at least ten-point boldface type that shall title the form "AGREEMENT CONCERNING NONREFUNDABILITY OF ADVANCE FEE", (C) provide for a duplicate copy, which shall be given to the person paying the advance fee at the time of payment of the advance fee, and (D) include such other specifications as the commissioner may by regulation prescribe.

(g) An agreement under subsection (e) of this section that does not meet the requirements of subsection (f) of this section shall be voidable at the election of the person paying the advance fee.

(h) (1) No mortgage lender or secondary mortgage broker required to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, shall enter into an agreement with or otherwise require any person to pay the mortgage lender or secondary mortgage broker for any fee, commission or other valuable consideration lost as a result of such person failing to consummate a secondary mortgage loan, provided the mortgage lender or secondary mortgage broker may collect such fee, commission or consideration as an advance fee subject to the requirements of this section.

(2) No secondary mortgage broker required to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, shall enter into an agreement with or otherwise require any person to pay the secondary mortgage broker any fee, commission or other valuable consideration for the prepayment of the principal of a secondary mortgage loan by such person before the date on which the principal is due.

(i) (1) For the purposes of this subsection:

(A) "Unfair or deceptive act or practice" means (i) the failure to

Substitute House Bill No. 7073

clearly and conspicuously state in the initial phase of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied, (ii) the failure to clearly and conspicuously state in the initial phase of the solicitation that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied, (iii) the failure in the initial solicitation to comply with the provisions of the federal Fair Credit Reporting Act relating to prescreening solicitations that use consumer reports, including the requirement to make a firm offer of credit to the consumer, or (iv) knowingly or negligently using information from a mortgage trigger lead (I) to solicit consumers who have opted out of prescreened offers of credit under the federal Fair Credit Reporting Act, or (II) to place telephone calls to consumers who have placed their contact information on a federal or state Do Not Call list; and

(B) "Mortgage trigger lead" means a consumer report obtained pursuant to Section 604(c)(1)(B) of the federal Fair Credit Reporting Act, 15 USC 1681b, where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit. "Mortgage trigger lead" does not include a consumer report obtained by a lender that holds or services existing indebtedness of the applicant who is the subject of the report.

(2) No mortgage lender or secondary mortgage broker shall engage in any unfair or deceptive act or practice in soliciting an application for a secondary mortgage loan when such solicitation is based, in whole or in part, on information contained in a mortgage trigger lead. Any violation of this subsection shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b.

Approved June 11, 2007