

By: Olivo

H.B. No. 3588

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mortgage brokers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 156, Finance Code, is amended by adding Sections 156.216 and 156.217 to read as follows:

Sec. 156.216. MORTGAGE BROKER DUTIES. (a) A mortgage broker owes a fiduciary duty to a mortgage applicant in the origination of a mortgage loan. The exercise of this duty includes:

(1) ensuring that any mortgage loan offered is affordable and meets the mortgage applicant's purposes, as determined by considering factors including:

(A) the applicant's circumstances;

(B) the purpose of the loan, including the reason why the applicant has applied for the loan; and

(C) the applicant's ability to repay;

(2) making reasonable efforts to secure a loan that is suitable to the mortgage applicant considering all of the circumstances, including interest rates, charges, and repayment terms of the loan and the loan options for which the applicant qualifies; and

(3) offering the mortgage applicant the most favorable terms available to a person having the applicant's qualifications.

(b) A mortgage applicant's statement of ability to repay a loan is not conclusive evidence of the applicant's ability to repay

1 the loan. A mortgage broker must evaluate other reliable,
2 objective evidence of affordability and ability to repay.

3 (c) The duties of a mortgage broker may not be waived or
4 disclaimed unless otherwise provided by law.

5 Sec. 156.217. PROHIBITED PRACTICES. (a) A mortgage broker
6 may not recommend or make a mortgage loan that contains a provision
7 for a prepayment penalty.

8 (b) A mortgage broker may not receive any yield-spread
9 premium from a lender for processing and originating a mortgage
10 loan.

11 (c) A mortgage broker may not recommend to a mortgage
12 applicant an interest rate, charge, principal amount, or prepayment
13 term that is not suitable to the mortgage applicant considering all
14 of the applicant's circumstances, including the characteristics of
15 the property that secures or will secure the mortgage loan and the
16 loan terms for which the mortgage applicant qualifies.

17 (d) A mortgage broker may not:

18 (1) mischaracterize:

19 (A) a mortgage applicant's credit history; or

20 (B) the mortgage loans available to an applicant;

21 (2) discourage a mortgage applicant from seeking a
22 mortgage loan from another creditor or with another mortgage
23 broker, if the mortgage broker is unable to offer or recommend a
24 suitable mortgage loan to the applicant;

25 (3) misrepresent the material facts or knowingly make
26 a false promise likely to induce an applicant to obtain a mortgage
27 loan, or pursue a course of misrepresentation through an agent or

1 otherwise;
2 (4) misrepresent to or conceal from a mortgage
3 applicant material factors or terms of a mortgage loan transaction;
4 (5) fail to disburse funds in accordance with an
5 agreement;
6 (6) engage in a transaction, practice, or course of
7 business that operates a fraud on a person or violates Subchapter E,
8 Chapter 17, Business & Commerce Code;
9 (7) fraudulently or deceitfully advertise a mortgage
10 loan or misrepresent the terms or charges incidental to a mortgage
11 loan in an advertisement;
12 (8) recommend or encourage default on an existing loan
13 or other debt before and in connection with the closing or planned
14 closing of a mortgage loan that refinances all or a portion of that
15 existing loan or debt;
16 (9) knowingly engage in the practice of making a home
17 loan to a mortgage applicant who refinances an existing loan if the
18 new loan does not have a reasonable, tangible net benefit to the
19 mortgage applicant considering all of the circumstances, including
20 the terms of the new and refinanced loans, the cost of the new loan,
21 and the mortgage applicant's circumstances; and
22 (10) influence or attempt to influence through direct
23 or indirect means the outcome of a real estate appraisal sought in
24 connection with a mortgage loan, or otherwise engage in a practice
25 or course of business that induces or attempts to induce a real
26 estate appraiser to violate the Uniform Standards of Professional
27 Appraisal Practice in connection with a mortgage loan.

1 (e) This section does not prohibit a mortgage broker from
2 providing a mortgage applicant with accurate, unbiased, or general
3 information about consumer home loans, underwriting standards,
4 methods of improving credit history, or other matters relevant to a
5 mortgage applicant.

6 SECTION 2. This Act takes effect September 1, 2009.