

Introduced by Senator Berryhill

January 31, 2013

An act to amend Section 2923.1 of the Civil Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

SB 153, as introduced, Berryhill. Mortgage brokers: fiduciary duty.

Existing law provides that a mortgage broker, as defined, providing mortgage brokerage services, as defined, to a borrower is the fiduciary of the borrower, and any violation of the broker's fiduciary duties is a violation of the mortgage broker's licensing law and specified civil penalty and liability provisions. Existing law further provides that this fiduciary duty includes a requirement that the mortgage broker place the economic interest of the borrower ahead of his or her own economic interest.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.1 of the Civil Code is amended to
2 read:
3 2923.1. (a) A mortgage broker providing mortgage brokerage
4 services to a borrower is the fiduciary of the borrower, and ~~any~~ a
5 violation of the broker's fiduciary duties shall be a violation of the
6 mortgage broker's license law. This fiduciary duty includes a
7 requirement that the mortgage broker place the economic interest
8 of the borrower ahead of his or her own economic interest. A

1 mortgage broker who provides mortgage brokerage services to the
2 borrower owes this fiduciary duty to the borrower regardless of
3 whether the mortgage broker is acting as an agent for any other
4 party in connection with the residential mortgage loan transaction.

5 (b) For purposes of this section, the following definitions apply:

6 (1) “Licensed person” means a real estate broker licensed under
7 the Real Estate Law (Part 1 (commencing with Section 10000) of
8 Division 4 of the Business and Professions Code), a finance lender
9 or broker licensed under the California Finance Lenders Law
10 (Division 9 (commencing with Section 22000) of the Financial
11 Code), a residential mortgage lender licensed under the California
12 Residential Mortgage Lending Act (Division 20 (commencing
13 with Section 50000) of the Financial Code), a commercial or
14 industrial bank organized under the ~~Banking Law~~ *Financial*
15 *Institutions Law* (Division 1 (commencing with Section 99) of the
16 Financial Code), a savings association organized under the Savings
17 Association Law (Division 2 (commencing with Section 5000) of
18 the Financial Code), and a credit union organized under the
19 California Credit Union Law (Division 5 (commencing with
20 Section 14000) of the Financial Code).

21 (2) “Mortgage broker” means a licensed person who provides
22 mortgage brokerage services. For purposes of this section, a
23 licensed person who makes a residential mortgage loan is a
24 “mortgage broker,” and subject to the requirements of this section
25 applicable to mortgage brokers, only with respect to transactions
26 in which the licensed person provides mortgage brokerage services.

27 (3) “Mortgage brokerage services” means arranging or
28 attempting to arrange, as exclusive agent for the borrower or as
29 dual agent for the borrower and lender, for compensation or in
30 expectation of compensation, paid directly or indirectly, a
31 residential mortgage loan made by an unaffiliated third party.

32 (4) “Residential mortgage loan” means a consumer credit
33 transaction that is secured by residential real property that is
34 improved by four or fewer residential units.

35 (c) The duties set forth in this section shall not be construed to
36 limit or narrow any other fiduciary duty of a mortgage broker.