

Senate Bill No. 411

Passed the Senate March 14, 1996

Secretary of the Senate

Passed the Assembly March 11, 1996

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1996, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

An act to add and repeal Chapter 9 (commencing with Section 50700) to Division 20 of the Financial Code, relating to lending, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, Calderon. Residential mortgage lending.

The California Residential Mortgage Lending Act regulates the making of residential mortgage loans by specified entities. The act requires the licensing of persons who make and service loans on residential real property.

This bill would permit a residential mortgage lender licensed under the act to provide brokerage services to a borrower, if the licensee first enters into a written brokerage agreement, as specified. The bill would restrict the licensee from brokering certain types of loans, specify the terms of the brokerage agreement with borrower, provide remedies to a borrower if a licensee makes a materially false or misleading statement, limit the type of fees or charges that a licensee can impose, and require annual reporting of loans brokered by the licensee under these provisions.

Under existing law, a real estate broker who negotiates a loan to be secured directly or collaterally by a lien on real property is required, among other things, to deliver a disclosure statement to the borrower before the borrower becomes obligated to complete the loan, as specified.

This bill would provide that these provisions apply to a residential mortgage loan arranged by a residential mortgage lender, as specified.

The bill would also limit the percentage level, as defined, of brokerage services that a licensee can provide, impose educational requirements on employees of licensees that provide brokerage services, and give the Commissioner of Corporations primary regulatory



jurisdiction over transactions in which brokerage services are provided by a licensed residential mortgage lender.

The bill would also provide that the Secretary of the Business, Transportation and Housing Agency shall report to the Legislature, as specified.

All of the above provisions would be repealed on June 30, 2001.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Chapter 9 (commencing with Section 50700) is added to Division 20 of the Financial Code, to read:

CHAPTER 9. BROKERAGE SERVICES FOR BORROWERS

50700. (a) No residential mortgage lender, or any person or employee acting under the authority of a residential mortgage lender's license, may provide brokerage services to a borrower, except as provided in subdivision (c).

(b) "Brokerage services" means either of the following:

(1) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in Section 50003(n), secured by residential real estate, as defined in Section 50003(s), made with the funds of another institutional lender, as defined in Section 50003(j)(1), (2), and (4), and closed in the name of that lender, for a fee paid by the borrower or the institutional lender.

(2) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in Section 50003(n), secured by residential real estate, as defined in Section 50003(s), made with the funds of another institutional lender, as defined in Section 50003(j)(1), (2), and (4), but closed in the name of the



licensee, for a fee paid by the borrower or the institutional lender.

(c) A residential mortgage lender may provide brokerage services under the authority of its license, if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of Section 50701.

(d) This chapter does not authorize a licensee to do any of the following:

(1) Provide brokerage services through independent contractors.

(2) Obtain or attempt to obtain for a borrower a residential mortgage loan that is a “high cost mortgage,” referred to in Section 152(aa)(1) of the Home Ownership and Equity Protection Act of 1994, as amended (12 U.S.C. Sec. 1602).

(3) Hold itself out to borrowers, through advertising by any means, as a mortgage broker, rather than a residential mortgage lender. However, a licensee shall disclose its status as a broker or agent when that disclosure is required by law.

(4) Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.

50701. (a) As soon as practical after a borrower requests that the licensee arrange a loan to be made by another institutional lender, and before the licensee performs brokerage services for the borrower, the licensee and borrower shall enter into a written loan brokerage agreement that satisfies the requirements of this section.

(b) Both the licensee’s authorized representative and the borrower shall sign and date the loan brokerage agreement, and the licensee shall deliver a copy of the fully executed loan brokerage agreement to the borrower either upon execution, if the documents are signed in the licensee’s office, or within three business days after execution.

(c) The loan brokerage agreement shall contain an explicit statement that (1) the licensee is acting as the



agent of the borrower in providing brokerage services to the borrower, and (2) when acting as agent for the borrower, it owes to that borrower a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the licensee is authorized to act as an agent for any other person, the brokerage agreement shall contain a statement of that fact and identification of that person.

(d) The loan brokerage agreement shall contain a detailed description of the services the licensee agrees to perform for the borrower, and a good faith estimate of any fees the licensee will receive for those services, whether paid by the borrower, the institutional lender, or both.

(e) The loan brokerage agreement shall carry a clear and conspicuous statement of the conditions under which the borrower is obligated to pay the licensee for brokerage services rendered under the agreement.

(f) The loan brokerage agreement shall provide that, if the licensee makes a materially false or misleading statement or omission in the inducement or implementation of the agreement, the borrower may, in addition to any other legal rights or remedies, upon written notice, do any of the following:

(1) Rescind the brokerage agreement.

(2) Recover fees paid by the borrower to the licensee for brokerage services rendered by the licensee pursuant to the agreement.

(3) Recover actual costs, including attorney's fees, for enforcing the borrower's rights under the loan brokerage agreement.

(g) If the loan brokerage agreement fails to set forth the rights in subdivision (f), these rights shall be implied by operation of law.

(h) The loan brokerage agreement shall be the only agreement between the borrower and the licensee with respect to a single loan.

(i) A licensee whose services to a borrower are limited to providing brokerage services may not require a



borrower to pay fees or charges before the residential mortgage loan closing, other than either of the following:

(1) Actual charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the application, such as credit reports, appraisals, inspections, flood certification, and tax service, and, in transactions where those services are provided by the licensee, a charge not to exceed the fee customarily charged for the same or comparable service in the community in which the service was rendered.

(2) An application fee.

A licensee may not accept a fee under Section 50203(a)(1) or (2) and subsequently require a borrower to pay additional fees or charges under this paragraph for the borrower's loan transaction.

(j) Any loan brokerage agreement that provides for the collection of an application fee shall be approved as to form by the commissioner before its use by a licensee, if the agreement meets the following requirements:

(1) The agreement specifies the services to be rendered for the application fee.

(2) The agreement sets forth the amount of the application fee and the date the fee becomes due and payable.

(3) The agreement does not contain a provision that purports to except or relieve the licensee from the responsibility to fulfill verbal commitments and representations made by employees or agents of the licensee when contracting for the application fee, or guarantee that a loan will be obtained.

(4) The agreement sets forth a definite date for full performance of the services promised in exchange for the application fee.

50702. (a) The annual report required by Section 50401(a) shall include both of the following:

(1) The number and the aggregate principal amount of closed residential mortgage loans secured by residential real estate in which the licensee provides brokerage services, as defined in this chapter.



(2) The number and aggregate principal amount of residential mortgage loans made by the licensee under this division.

(b) The sum total of the aggregate principal loan amounts reported in paragraphs (1) and (2) of subdivision (a) shall be deemed the aggregate principal amount of mortgage loans secured by residential real property originated by the licensee, for purposes of determining a licensee's annual assessment under subdivision (a) of Section 50401.

(c) The commissioner shall provide copies of the annual reports required by subdivision (a) of Section 50401 to the Department of Real Estate upon request of the Real Estate Commissioner.

50703. Notwithstanding Section 10248.3 of the Business and Professions Code, the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code shall apply to a residential mortgage loan arranged by a licensee pursuant to this chapter, unless that loan exceeds the principal loan amount specified for a bona fide loan secured directly or collaterally by a first trust deed or a bona fide loan secured directly or collaterally by a lien junior thereto, specified in Section 10245 of the Business and Professions Code.

50704. (a) The percentage level of brokerage services authorized by this chapter for a licensee in its first calendar year of operation under this division may not exceed 5 percent. Thereafter, the percentage level of brokerage services authorized by this chapter for a licensee in any given calendar year may not exceed the greater of 5 percent, or 10 percent less the percentage level of brokerage services provided by the licensee in the previous calendar year.

(b) The "percentage level of brokerage services" shall be computed by dividing the number of residential mortgage loans reported under paragraph (1) of subdivision (a) of Section 50702 by the number of residential mortgage loans reported under paragraph (2) of subdivision (a) of Section 50702.



(c) For purposes of computing the number of residential mortgage loan transactions in which the licensee provides brokerage services, the following transactions shall be excluded:

(1) A residential mortgage loan transaction in which the licensee provides the loan applicant with an adverse action notice as required by the federal Equal Credit Opportunity Act, and regulations promulgated thereunder.

(2) A residential mortgage loan transaction negotiated through a residential mortgage lender employee pursuant to a valid real estate broker's license, or through a salesperson licensed to that broker.

(d) The exemption from the Real Estate Law set forth in paragraph (10) of subdivision (a) of Section 10133.1 of the Business and Professions Code does not apply to brokerage services performed for borrowers that are in excess of the percentage level of brokerage services authorized by this section.

50705. Prior to providing brokerage services for a borrower under this chapter, and thereafter once every four years, every residential mortgage lender employee who provides brokerage services shall complete educational courses equivalent to those described in paragraphs (1) and (2) of subdivision (a) of Section 10170.5 of the Business and Professions Code. This section does not impose an additional requirement upon an employee who holds a valid real estate license.

50706. (a) Except as provided in subdivision (b), the commissioner has primary regulatory jurisdiction over all transactions in which a licensed residential mortgage lender provides brokerage services, whether the brokerage services are provided under the authority of this chapter or under the Real Estate Law.

(b) If the commissioner has reason to believe that a residential mortgage lender or one of its employees has violated the Real Estate Law while providing brokerage services under a real estate broker's license, the commissioner shall refer the matter to the Real Estate Commissioner, who may conduct an investigation to



determine if a violation of the Real Estate Law has occurred. If the Real Estate Commissioner believes a violation has occurred, the Real Estate Commissioner may commence an enforcement action under the Real Estate Law.

50707. (a) This chapter shall remain operative until June 30, 2001, on which date it shall be repealed, unless a later enacted statute extends or deletes that date. The purpose of this provision is to allow the Legislature to assess whether this chapter (1) increases or decreases the protections and remedies for consumers of brokerage services compared to provisions of the Real Estate Law applicable to mortgage brokerage activities; and (2) increases or decreases the cost to the state of regulating mortgage brokerage activities.

(b) On or before December 31, 1999, the Secretary of the Business, Transportation and Housing Agency shall conduct a study of the matters referenced in subdivision (a) of this section, and deliver a report summarizing the findings of the study to both the Assembly Committee on Rules and Senate Rules Committee, which shall refer the report to appropriate policy committees. The report shall be prepared from then existing agency resources.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to most effectively and efficiently implement the California Residential Mortgage Lending Act, it is necessary that this act take effect immediately.



Approved _____, 1996

Governor

