
By: **Delegates Wood, Harrison, Kirk, Krebs, Love, Miller, Minnick, Moe,
Taylor, and Vaughn**

Introduced and read first time: February 12, 2004

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 3, 2004

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law - Mortgage Brokers - Compensation and Finder's Fees**

3 FOR the purpose of ~~altering a certain definition to clarify that a finder's fee means~~
4 ~~compensation or commission imposed by a mortgage broker and paid by or on~~
5 ~~behalf of a borrower for a mortgage broker's services and does not include~~
6 ~~compensation or commission directly or indirectly imposed or received by a~~
7 ~~person named as the lender in an agreement, note, mortgage, deed of trust, or~~
8 ~~other evidence of indebtedness; making a technical correction; providing for the~~
9 ~~application of this Act providing that a mortgage broker is not considered a~~
10 ~~lender for purposes of the prohibition on receiving a certain finder's fee under~~
11 ~~certain circumstances; defining certain terms; stating the intent of the General~~
12 ~~Assembly; and generally applying to a finder's fee for a mortgage broker relating~~
13 ~~to mortgage fees and disclosures.~~

14 BY repealing and reenacting, with amendments,
15 Article - Commercial Law
16 Section 12-801 and 12-804
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

Article - Commercial Law

12-801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Borrower" means an individual who obtains a loan or advance of money.

(c) ~~(1)~~ "Finder's fee" means any compensation or commission directly or indirectly imposed by a MORTGAGE broker and paid by or on behalf of the borrower for the MORTGAGE broker's services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money.

~~(2) "FINDER'S FEE" DOES NOT INCLUDE COMPENSATION OR COMMISSION DIRECTLY OR INDIRECTLY IMPOSED OR RECEIVED BY A PERSON NAMED AS THE LENDER IN AN AGREEMENT, NOTE, MORTGAGE, DEED OF TRUST, OR OTHER EVIDENCE OF INDEBTEDNESS.~~

(d) "Lender" means a person defined as a mortgage lender under § 11-501(j)(1)(ii) of the Financial Institutions Article.

(e) (1) "Mortgage broker" means a person defined as a mortgage [lender] BROKER under [§ 11-501(j)(1)(i)] § 11-501 of the Financial Institutions Article.

(2) "MORTGAGE BROKER", WITH RESPECT TO A TABLE FUNDED TRANSACTION, INCLUDES A MORTGAGE BROKER WHO CLOSSES A MORTGAGE LOAN IN THE MORTGAGE BROKER'S OWN NAME AND CONTEMPORANEOUSLY ASSIGNS THE LOAN TO THE ACTUAL LENDER.

(f) "Person" includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(G) "TABLE FUNDED TRANSACTION" MEANS A MORTGAGE LOAN TRANSACTION IN WHICH A LOAN IS FUNDED AT SETTLEMENT BY A CONTEMPORANEOUS ADVANCE OF LOAN FUNDS AND ASSIGNMENT OF THE LOAN TO THE PERSON ADVANCING THE FUNDS.

12-804.

(a) A mortgage broker may charge a finder's fee not in excess of 8 percent of the amount of the loan or advance.

(b) In addition to a finder's fee, a mortgage broker may charge a borrower for the actual cost of any appraisal or credit report obtained by the mortgage broker.

(c) A mortgage broker obtaining a mortgage loan with respect to the same property more than once within a 24-month period may charge a finder's fee only on so much of the loan as is in excess of the initial loan.

(d) The provisions of this section do not apply to:

1 (1) The charging of fees and charges otherwise permitted under this
2 title; or

3 (2) Attorney's fees unless the attorney is functioning as a mortgage
4 broker.

5 (e) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
6 A mortgage broker may not charge a finder's fee in any transaction in which the
7 mortgage broker or an owner, part owner, partner, director, officer, or employee of the
8 mortgage broker is the lender or an owner, part owner, partner, director, officer, or
9 employee of the lender.

10 (2) A MORTGAGE BROKER WHO CLOSSES A MORTGAGE LOAN IN THE
11 MORTGAGE BROKER'S OWN NAME IN A TABLE FUNDED TRANSACTION IS NOT
12 CONSIDERED A LENDER FOR THE PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION
13 IF THE MORTGAGE BROKER AT OR BEFORE THE CLOSING:

14 (I) ADVISES THE BORROWER IN WRITING THAT THE MORTGAGE
15 BROKER IS NOT THE ACTUAL LENDER IN THE TRANSACTION; AND

16 (II) DISCLOSES THE NAME AND ADDRESS OF THE ACTUAL LENDER
17 WHO IS ADVANCING THE FUNDS FOR THE LOAN AND TO WHOM THE LOAN WILL
18 INITIALLY BE ASSIGNED AT OR AFTER THE SETTLEMENT.

19 SECTION 2. AND BE IT FURTHER ENACTED, That, in enacting this Act shall
20 not be construed to apply to, it is not the intent of the General Assembly to regulate
21 fees, charged by a person named as a lender in a note, mortgage, deed of trust, or
22 other evidence of indebtedness, which are governed by subtitles other than Title 12,
23 Subtitle 8 of the Commercial Law Article.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 June 1, 2004.