

SENATE BILL No. 932

October 21, 2009, Introduced by Senators ANDERSON, WHITMER, CHERRY, BARCIA, CLARKE, OLSHOVE, BASHAM, SWITALSKI, HUNTER, SCOTT and BRATER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," by amending sections 22 and 31 (MCL 445.1672 and 445.1681), section 22 as amended by 2002 PA 391.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22. (1) It is a violation of this act for a licensee or
2 registrant to do any of the following:

3 (a) Fail to conduct the business in accordance with law, this
4 act, or a rule promulgated or order issued under this act.

5 (b) Engage in fraud, deceit, or material misrepresentation in
6 connection with any transaction governed by this act.

7 (c) Intentionally or due to gross or wanton negligence,
8 repeatedly fail to provide borrowers material disclosures of
9 information as required by law.

1 (d) Suppress or withhold from the commissioner any information
2 that the licensee or registrant possesses and that, if submitted,
3 would have made the licensee or registrant ineligible for licensing
4 or registration under this act or would have warranted the
5 commissioner's denial of a license application or refusal to accept
6 a registration.

7 (e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164,
8 regulating the handling of mortgage escrow accounts by mortgagees.

9 (f) Until proper disbursement is made, fail to place in a
10 trust or escrow account held by a federally insured depository
11 financial institution in a manner approved by the commissioner any
12 money, funds, deposits, checks, drafts, or other negotiable
13 instruments received by the licensee that the borrower is obligated
14 to pay to a third party, including amounts paid to the holder of
15 the mortgage loan, amounts for property taxes and insurance
16 premiums, or amounts paid under an agreement that requires if the
17 mortgage loan is not closed the amounts paid shall be refunded to
18 the prospective borrower or if the mortgage loan is closed the
19 amounts paid shall be applied to fees and costs incurred at the
20 time the mortgage loan is closed. Fees and costs include, but are
21 not limited to, title insurance premiums and recording fees. Fees
22 and costs do not include amounts paid to cover costs incurred to
23 process the mortgage loan application, to obtain an appraisal, or
24 to receive a credit report.

25 (g) Refuse to permit an examination or investigation by the
26 commissioner of the books and affairs of the licensee or
27 registrant, or has refused or failed, within a reasonable time, to

1 furnish any information or make any report that may be required by
2 the commissioner under this act.

3 (h) To be convicted of a felony, or any misdemeanor of which
4 an essential element is fraud.

5 (i) Refuse or fail to pay, within a reasonable time, those
6 expenses assessed to the licensee or registrant under this act.

7 (j) Fail to make restitution after having been ordered to do
8 so by the commissioner or an administrative agency, or fail to make
9 restitution or pay damages to persons injured by the licensee's or
10 registrant's business transactions after having been ordered to do
11 so by a court.

12 (k) Fail to make a mortgage loan in accordance with a written
13 commitment to make a mortgage loan issued to, and accepted by, a
14 person when the person has timely and completely satisfied all the
15 conditions of the commitment before the expiration of the
16 commitment.

17 (l) Require a prospective borrower to deal exclusively with the
18 licensee or registrant in regard to a mortgage loan application.

19 (m) Take a security interest in real property before closing
20 the mortgage loan to secure payment of fees assessed in connection
21 with a mortgage loan application.

22 (n) Except as provided under section 18e, knowingly permit a
23 person to violate an order that has been issued under this act or
24 any other financial licensing act that prohibits that person from
25 being employed by, an agent of, or a control person of the licensee
26 or registrant.

27 (O) **FAIL TO DISCLOSE TO EACH MORTGAGE LOAN APPLICANT, AT THE**

1 TIME THE PERSON APPLIES FOR A MORTGAGE LOAN, WHETHER THE LICENSEE
2 OR REGISTRANT MAY ASSIGN, SELL, OR TRANSFER THE SERVICING OF THE
3 MORTGAGE LOAN AT ANY TIME WHILE THE MORTGAGE LOAN IS OUTSTANDING.

4 (P) FAIL TO NOTIFY A BORROWER OF ANY ASSIGNMENT, SALE, OR
5 OTHER TRANSFER OF THE SERVICING OF THE BORROWER'S MORTGAGE LOAN BY
6 THE LICENSEE OR REGISTRANT, BY PROVIDING WRITTEN NOTICE THAT MEETS
7 ALL OF THE FOLLOWING:

8 (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii) OR SUBSECTION (2),
9 IS DELIVERED TO THE BORROWER AT LEAST 15 DAYS BEFORE THE EFFECTIVE
10 DATE OF THE TRANSFER OF THE SERVICING OF THE MORTGAGE LOAN.

11 (ii) EXCEPT AS PROVIDED IN SUBSECTION (2), IS DELIVERED TO THE
12 BORROWER NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE
13 TRANSFER OF THE SERVICING OF THE MORTGAGE LOAN IF THE TRANSFER IS
14 THE RESULT OF ANY OF THE FOLLOWING:

15 (A) TERMINATION OF THE CONTRACT FOR SERVICING THE MORTGAGE
16 LOAN FOR CAUSE.

17 (B) COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE
18 LICENSEE OR REGISTRANT SERVICING THE MORTGAGE LOAN.

19 (C) COMMENCEMENT BY THE COMMISSIONER OF CONSERVATORSHIP
20 PROCEEDINGS UNDER SECTION 32 AGAINST THE LICENSEE OR REGISTRANT
21 SERVICING THE MORTGAGE LOAN BEFORE THE TRANSFER.

22 (iii) INCLUDES ALL OF THE FOLLOWING INFORMATION:

23 (A) THE EFFECTIVE DATE OF TRANSFER OF THE SERVICING.

24 (B) THE NAME, ADDRESS, AND A TOLL-FREE OR COLLECT-CALL
25 TELEPHONE NUMBER OF THE TRANSFEREE OF THE SERVICING.

26 (C) A NAME OF AND A TOLL-FREE OR COLLECT-CALL TELEPHONE NUMBER
27 FOR AN EMPLOYEE OR A DEPARTMENT OF THE LICENSEE OR REGISTRANT THAT

1 IS THE TRANSFEROR OF THE SERVICING THAT THE BORROWER MAY CONTACT TO
2 ASK QUESTIONS OR OBTAIN INFORMATION RELATING TO THE TRANSFER OF THE
3 SERVICING OF THE BORROWER'S MORTGAGE LOAN.

4 (D) THE NAME OF AND A TOLL-FREE OR COLLECT-CALL TELEPHONE
5 NUMBER FOR AN EMPLOYEE OR A DEPARTMENT OF THE PERSON THAT IS THE
6 TRANSFEREE OF THE SERVICING THAT THE BORROWER MAY CONTACT TO ASK
7 QUESTIONS OR OBTAIN INFORMATION RELATING TO THE TRANSFER OF THE
8 SERVICING OF THE BORROWER'S MORTGAGE LOAN.

9 (E) THE DATE ON WHICH THE LICENSEE OR REGISTRANT THAT IS
10 SERVICING THE MORTGAGE LOAN BEFORE THE TRANSFER WILL CEASE TO
11 ACCEPT PAYMENTS RELATING TO THE MORTGAGE LOAN AND THE DATE ON WHICH
12 THE TRANSFEREE WILL BEGIN TO ACCEPT THOSE PAYMENTS.

13 (F) ANY INFORMATION CONCERNING THE EFFECT THE TRANSFER MAY
14 HAVE, IF ANY, ON THE TERMS OF OR THE CONTINUED AVAILABILITY OF
15 MORTGAGE LIFE OR DISABILITY INSURANCE OR ANY OTHER TYPE OF OPTIONAL
16 INSURANCE AND WHAT ACTION, IF ANY, THE BORROWER MUST TAKE TO
17 MAINTAIN COVERAGE.

18 (G) A STATEMENT THAT THE TRANSFER OF THE SERVICING OF THE
19 MORTGAGE LOAN DOES NOT AFFECT ANY TERM OR CONDITION OF THE
20 BORROWER'S MORTGAGE OR ANY OTHER SECURITY INSTRUMENTS EXECUTED BY
21 THE BORROWER IN CONNECTION WITH THE MORTGAGE LOAN, OTHER THAN TERMS
22 DIRECTLY RELATED TO THE SERVICING OF THE MORTGAGE LOAN.

23 (Q) FAIL TO NOTIFY A BORROWER OF ANY ASSIGNMENT, SALE, OR
24 OTHER TRANSFER OF THE SERVICING OF THE BORROWER'S MORTGAGE LOAN TO
25 A LICENSEE OR REGISTRANT, BY PROVIDING WRITTEN NOTICE THAT MEETS
26 ALL OF THE FOLLOWING:

27 (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii) OR SUBSECTION (2),

1 IS DELIVERED TO THE BORROWER AT LEAST 15 DAYS AFTER THE EFFECTIVE
2 DATE OF THE TRANSFER OF THE SERVICING OF THE MORTGAGE LOAN.

3 (ii) EXCEPT AS PROVIDED IN SUBSECTION (2), IS DELIVERED TO THE
4 BORROWER NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE
5 TRANSFER OF THE SERVICING OF THE MORTGAGE LOAN IF THE TRANSFER IS
6 THE RESULT OF ANY OF THE FOLLOWING:

7 (A) TERMINATION OF THE CONTRACT FOR SERVICING THE MORTGAGE
8 LOAN FOR CAUSE.

9 (B) COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE
10 LICENSEE OR REGISTRANT SERVICING THE LOAN.

11 (C) COMMENCEMENT BY THE COMMISSIONER OF CONSERVATORSHIP
12 PROCEEDINGS UNDER SECTION 32 AGAINST THE LICENSEE OR REGISTRANT
13 SERVICING THE MORTGAGE LOAN AFTER THE TRANSFER.

14 (iii) INCLUDES ALL OF THE FOLLOWING INFORMATION:

15 (A) THE EFFECTIVE DATE OF TRANSFER OF THE SERVICING.

16 (B) THE NAME, ADDRESS, AND A TOLL-FREE OR COLLECT-CALL
17 TELEPHONE NUMBER OF THE TRANSFEROR OF THE SERVICING.

18 (C) A NAME OF AND A TOLL-FREE OR COLLECT-CALL TELEPHONE NUMBER
19 FOR AN EMPLOYEE OR A DEPARTMENT OF THE LICENSEE OR REGISTRANT THAT
20 IS THE TRANSFEREE OF THE SERVICING THAT THE BORROWER MAY CONTACT TO
21 ASK QUESTIONS OR OBTAIN INFORMATION RELATING TO THE TRANSFER OF THE
22 SERVICING OF THE BORROWER'S MORTGAGE LOAN.

23 (D) THE NAME OF AND A TOLL-FREE OR COLLECT-CALL TELEPHONE
24 NUMBER FOR AN EMPLOYEE OR A DEPARTMENT OF THE PERSON THAT IS THE
25 TRANSFEROR OF THE SERVICING THAT THE BORROWER MAY CONTACT TO ASK
26 QUESTIONS OR OBTAIN INFORMATION RELATING TO THE TRANSFER OF THE
27 SERVICING OF THE BORROWER'S MORTGAGE LOAN.

1 (E) THE DATE ON WHICH THE PERSON THAT WAS SERVICING THE
2 MORTGAGE LOAN BEFORE THE TRANSFER WILL CEASE TO ACCEPT PAYMENTS
3 RELATING TO THE MORTGAGE LOAN AND THE DATE ON WHICH THE LICENSEE OR
4 REGISTRANT WILL BEGIN TO ACCEPT THOSE PAYMENTS.

5 (F) ANY INFORMATION CONCERNING THE EFFECT THE TRANSFER MAY
6 HAVE, IF ANY, ON THE TERMS OF OR THE CONTINUED AVAILABILITY OF
7 MORTGAGE LIFE OR DISABILITY INSURANCE OR ANY OTHER TYPE OF
8 OPTIONAL INSURANCE AND WHAT ACTION, IF ANY, THE BORROWER MUST
9 TAKE TO MAINTAIN COVERAGE.

10 (G) A STATEMENT THAT THE TRANSFER OF THE SERVICING OF THE
11 MORTGAGE LOAN TO THE LICENSEE OR REGISTRANT DOES NOT AFFECT ANY
12 TERM OR CONDITION OF THE BORROWER'S MORTGAGE OR ANY OTHER SECURITY
13 INSTRUMENTS EXECUTED BY THE BORROWER IN CONNECTION WITH THE
14 MORTGAGE LOAN, OTHER THAN TERMS DIRECTLY RELATED TO THE SERVICING
15 OF THE MORTGAGE LOAN.

16 (2) SUBSECTION (1) (P) (i) AND (ii) DOES NOT APPLY TO ANY
17 ASSIGNMENT, SALE, OR OTHER TRANSFER OF THE SERVICING OF A MORTGAGE
18 LOAN IF THE LICENSEE OR REGISTRANT MAKING THE MORTGAGE LOAN
19 PROVIDES WRITTEN NOTICE OF THE TRANSFER TO THE BORROWER AT THE
20 CLOSING OF THE MORTGAGE LOAN THAT MEETS THE REQUIREMENTS OF
21 SUBSECTION (1) (P) (iii). SUBSECTION (1) (Q) (i) AND (ii) DOES NOT APPLY TO
22 ANY ASSIGNMENT, SALE, OR OTHER TRANSFER OF THE SERVICING OF A
23 MORTGAGE LOAN TO A LICENSEE OR REGISTRANT IF THE PERSON MAKING THE
24 MORTGAGE LOAN PROVIDES WRITTEN NOTICE OF THE TRANSFER TO THE
25 BORROWER AT THE CLOSING OF THE MORTGAGE LOAN THAT MEETS THE
26 REQUIREMENTS OF SUBSECTION (1) (Q) (iii).

27 Sec. 31. (1) Whether or not a person seeks damages or has an

1 adequate remedy at law, any person, prosecutor, or the attorney
2 general may bring an action, including a class action, to do any of
3 the following:

4 (a) Obtain a declaratory judgment that a method, act, or
5 practice is a violation of this act.

6 (b) Obtain an injunction against a person who is engaging in
7 or is about to engage in a method, act, or practice that violates
8 this act.

9 (c) Except as limited by subsection (2), recover actual
10 damages resulting from a violation of this act, **OTHER THAN A**
11 **VIOLATION OF SECTION 22(1)(O), (P), OR (Q),** or \$250.00, whichever
12 is greater, together with reasonable attorney fees and the costs of
13 bringing the action.

14 **(D) RECOVER ACTUAL DAMAGES RESULTING FROM A VIOLATION OF**
15 **SECTION 22(1)(O), (P), OR (Q), OR \$1,500.00, WHICHEVER IS GREATER,**
16 **TOGETHER WITH REASONABLE ATTORNEY FEES AND THE COSTS OF BRINGING**
17 **THE ACTION.**

18 (2) If the licensee or registrant establishes by a
19 preponderance of the evidence that the failure to comply with the
20 act was not willful, intentional, or the result of gross or wanton
21 negligence, the amount recovered pursuant to subsection (1)(c)
22 shall not exceed actual damages.

23 Enacting section 1. This amendatory act takes effect July 31,
24 2010.