

# SENATE BILL No. 933

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 1981 PA 125, entitled "The secondary mortgage loan act," by amending sections 24 and 27 (MCL 493.74 and 493.77), section 24 as amended by 2002 PA 392 and section 27 as amended by 2009 PA 77.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 24. (1) A licensee or registrant shall not transfer or  
2 assign a secondary mortgage loan or a security directly  
3 representing an interest in 1 or more secondary mortgage loans  
4 before the disbursement of 75% or more of the proceeds of the  
5 secondary mortgage loan to, or for the benefit of, the borrower.  
6 This subsection shall not apply to any of the following:

7           (a) A land contract not considered to be an equitable  
8 secondary mortgage.

9           (b) A loan made under a state or federal government program

1 that allows the lender to escrow more than 25% of the proceeds for  
2 a limited period of time.

3 (c) A construction loan.

4 (d) A secondary mortgage loan that provides in writing that  
5 the loan proceeds shall be disbursed to or for the benefit of the  
6 borrower in installments or upon the request of the borrower or  
7 upon the completion of renovations or repairs to the dwelling  
8 situated on the real property subject to the secondary mortgage  
9 loan.

10 (2) It is a violation of this act for a licensee or registrant  
11 to do any of the following:

12 (a) Suppress or withhold from the commissioner any information  
13 that the licensee or registrant possesses that would make the  
14 licensee or registrant ineligible for licensing or registration  
15 under this act or would warrant the commissioner's denial of a  
16 license or registration application.

17 (b) Violate any provisions of 1966 PA 125, MCL 565.161 to  
18 565.164, regulating the handling of mortgage escrow accounts by  
19 mortgagees.

20 (c) Until proper disbursement is made, fail to place in a  
21 trust or escrow account held by a depository financial institution  
22 in a manner approved by the commissioner any money, funds,  
23 deposits, checks, drafts, or other negotiable instruments received  
24 by a broker, lender, or servicer that is the portion of a payment  
25 on a secondary mortgage loan that the person is obligated to pay to  
26 a third party. The deposits shall include amounts paid to the  
27 holder of the secondary mortgage loan, amounts for property taxes

1 and insurance premiums, and amounts paid under an agreement that  
2 requires, if the secondary mortgage loan is not closed, the amounts  
3 paid shall be refunded to the prospective borrower, or if the  
4 secondary mortgage loan is closed, the amounts paid shall be  
5 applied to fees and costs incurred at the time the secondary  
6 mortgage loan is closed. Fees and costs include, but are not  
7 limited to, title insurance premiums and recording fees. Fees and  
8 costs do not include amounts paid to cover costs incurred to  
9 process the secondary mortgage loan application, to obtain an  
10 appraisal, or to receive a credit report.

11 (d) Refuse to permit an examination or investigation by the  
12 commissioner of the books and affairs of the licensee or  
13 registrant, or refuse or fail, within a reasonable time, to furnish  
14 any information or make a report that may be required by the  
15 commissioner under this act.

16 (e) Be convicted of a felony, or any misdemeanor of which an  
17 essential element is fraud.

18 (f) Refuse or fail to pay within a reasonable time expenses  
19 assessed under this act.

20 (g) Fail to make restitution after having been ordered to do  
21 so by the commissioner or an administrative agency, or fail to make  
22 restitution or pay damages to persons injured by the licensee's or  
23 registrant's business transactions after having been ordered to do  
24 so by a court.

25 (h) Fail to make a secondary mortgage loan pursuant to, and in  
26 accordance with, a written commitment to make a secondary mortgage  
27 loan issued to, and accepted by, a person ~~when~~ **IF** the person has

1 timely and completely satisfied all the conditions of the  
2 commitment ~~prior to~~ **BEFORE** the expiration of the commitment.

3 (i) Require a prospective borrower to deal exclusively with  
4 the licensee or registrant in regard to a secondary mortgage loan  
5 application.

6 (j) Take a security interest in real property before closing  
7 the secondary mortgage loan to secure payment of fees assessed in  
8 connection with a secondary mortgage loan application.

9 (k) Except as otherwise provided under section 14e, knowingly  
10 permit a person to violate an order that has been issued under this  
11 act or any other financial licensing act that prohibits that person  
12 from being employed by, an agent of, or a control person of the  
13 licensee or registrant.

14 (l) **FAIL TO DISCLOSE TO EACH SECONDARY MORTGAGE LOAN APPLICANT,**  
15 **AT THE TIME THE PERSON APPLIES FOR A SECONDARY MORTGAGE LOAN,**  
16 **WHETHER THE LICENSEE OR REGISTRANT MAY ASSIGN, SELL, OR TRANSFER**  
17 **THE SERVICING OF THE SECONDARY MORTGAGE LOAN AT ANY TIME WHILE THE**  
18 **SECONDARY MORTGAGE LOAN IS OUTSTANDING.**

19 (m) **FAIL TO NOTIFY A BORROWER OF ANY ASSIGNMENT, SALE, OR**  
20 **OTHER TRANSFER OF THE SERVICING OF THE BORROWER'S SECONDARY**  
21 **MORTGAGE LOAN BY THE LICENSEE OR REGISTRANT, BY PROVIDING WRITTEN**  
22 **NOTICE THAT MEETS ALL OF THE FOLLOWING:**

23 (i) **EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii) OR SUBSECTION (3),**  
24 **IS DELIVERED TO THE BORROWER AT LEAST 15 DAYS BEFORE THE EFFECTIVE**  
25 **DATE OF THE TRANSFER OF THE SERVICING OF THE SECONDARY MORTGAGE**  
26 **LOAN.**

27 (ii) **EXCEPT AS PROVIDED IN SUBSECTION (3), IS DELIVERED TO THE**

1 BORROWER NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE  
2 TRANSFER OF THE SERVICING OF THE SECONDARY MORTGAGE LOAN IF THE  
3 TRANSFER IS THE RESULT OF ANY OF THE FOLLOWING:

4 (A) TERMINATION OF THE CONTRACT FOR SERVICING THE SECONDARY  
5 MORTGAGE LOAN FOR CAUSE.

6 (B) COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE  
7 LICENSEE OR REGISTRANT SERVICING THE SECONDARY MORTGAGE LOAN.

8 (C) COMMENCEMENT BY THE COMMISSIONER OF CONSERVATORSHIP  
9 PROCEEDINGS UNDER SECTION 12A AGAINST THE LICENSEE OR REGISTRANT  
10 SERVICING THE SECONDARY MORTGAGE LOAN BEFORE THE TRANSFER.

11 (iii) INCLUDES ALL OF THE FOLLOWING INFORMATION:

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

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

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

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

25 (E) THE DATE ON WHICH THE LICENSEE OR REGISTRANT THAT IS  
26 SERVICING THE SECONDARY MORTGAGE LOAN BEFORE THE TRANSFER WILL  
27 CEASE TO ACCEPT PAYMENTS RELATING TO THE SECONDARY MORTGAGE LOAN

1 AND THE DATE ON WHICH THE TRANSFEREE WILL BEGIN TO ACCEPT THOSE  
2 PAYMENTS.

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

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

14 (N) FAIL TO NOTIFY A BORROWER OF ANY ASSIGNMENT, SALE, OR  
15 OTHER TRANSFER OF THE SERVICING OF THE BORROWER'S SECONDARY  
16 MORTGAGE LOAN TO A LICENSEE OR REGISTRANT, BY PROVIDING WRITTEN  
17 NOTICE THAT MEETS ALL OF THE FOLLOWING:

18 (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii) OR SUBSECTION (3),  
19 IS DELIVERED TO THE BORROWER AT LEAST 15 DAYS AFTER THE EFFECTIVE  
20 DATE OF THE TRANSFER OF THE SERVICING OF THE SECONDARY MORTGAGE  
21 LOAN.

22 (ii) EXCEPT AS PROVIDED IN SUBSECTION (3), IS DELIVERED TO THE  
23 BORROWER NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE  
24 TRANSFER OF THE SERVICING OF THE SECONDARY MORTGAGE LOAN IF THE  
25 TRANSFER IS THE RESULT OF ANY OF THE FOLLOWING:

26 (A) TERMINATION OF THE CONTRACT FOR SERVICING THE SECONDARY  
27 MORTGAGE LOAN FOR CAUSE.

1 (B) COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE  
2 LICENSEE OR REGISTRANT SERVICING THE SECONDARY MORTGAGE LOAN.

3 (C) COMMENCEMENT BY THE COMMISSIONER OF CONSERVATORSHIP  
4 PROCEEDINGS UNDER SECTION 12A AGAINST THE LICENSEE OR REGISTRANT  
5 SERVICING THE SECONDARY MORTGAGE LOAN AFTER THE TRANSFER.

6 (iii) INCLUDES ALL OF THE FOLLOWING INFORMATION:

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

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

10 (C) A NAME OF AND A TOLL-FREE OR COLLECT CALL TELEPHONE NUMBER  
11 FOR AN EMPLOYEE OR A DEPARTMENT OF THE LICENSEE OR REGISTRANT THAT  
12 IS THE TRANSFEREE OF THE SERVICING THAT THE BORROWER MAY CONTACT TO  
13 ASK QUESTIONS OR OBTAIN INFORMATION RELATING TO THE TRANSFER OF THE  
14 SERVICING OF THE BORROWER'S SECONDARY MORTGAGE LOAN.

15 (D) THE NAME OF AND A TOLL-FREE OR COLLECT CALL TELEPHONE  
16 NUMBER FOR AN EMPLOYEE OR A DEPARTMENT OF THE PERSON THAT IS THE  
17 TRANSFEROR OF THE SERVICING THAT THE BORROWER MAY CONTACT TO ASK  
18 QUESTIONS OR OBTAIN INFORMATION RELATING TO THE TRANSFER OF THE  
19 SERVICING OF THE BORROWER'S SECONDARY MORTGAGE LOAN.

20 (E) THE DATE ON WHICH THE PERSON THAT WAS SERVICING THE  
21 SECONDARY MORTGAGE LOAN BEFORE THE TRANSFER WILL CEASE TO ACCEPT  
22 PAYMENTS RELATING TO THE SECONDARY MORTGAGE LOAN AND THE DATE ON  
23 WHICH THE LICENSEE OR REGISTRANT WILL BEGIN TO ACCEPT THOSE  
24 PAYMENTS.

25 (F) ANY INFORMATION CONCERNING THE EFFECT THE TRANSFER MAY  
26 HAVE, IF ANY, ON THE TERMS OF OR THE CONTINUED AVAILABILITY OF  
27 MORTGAGE LIFE OR DISABILITY INSURANCE OR ANY OTHER TYPE OF

1 OPTIONAL INSURANCE AND WHAT ACTION, IF ANY, THE BORROWER MUST  
2 TAKE TO MAINTAIN COVERAGE.

3 (G) A STATEMENT THAT THE TRANSFER OF THE SERVICING OF THE  
4 SECONDARY MORTGAGE LOAN TO THE LICENSEE OR REGISTRANT DOES NOT  
5 AFFECT ANY TERM OR CONDITION OF THE BORROWER'S SECONDARY MORTGAGE  
6 OR ANY OTHER SECURITY INSTRUMENTS EXECUTED BY THE BORROWER IN  
7 CONNECTION WITH THE SECONDARY MORTGAGE LOAN, OTHER THAN TERMS  
8 DIRECTLY RELATED TO THE SERVICING OF THE SECONDARY MORTGAGE LOAN.

9 (3) SUBSECTION (2) (M) (i) AND (ii) DOES NOT APPLY TO ANY  
10 ASSIGNMENT, SALE, OR OTHER TRANSFER OF THE SERVICING OF A SECONDARY  
11 MORTGAGE LOAN IF THE LICENSEE OR REGISTRANT MAKING THE SECONDARY  
12 MORTGAGE LOAN PROVIDES WRITTEN NOTICE OF THE TRANSFER TO THE  
13 BORROWER AT THE CLOSING OF THE SECONDARY MORTGAGE LOAN THAT MEETS  
14 THE REQUIREMENTS OF SUBSECTION (2) (M) (iii) . SUBSECTION (2) (N) (i) AND  
15 (ii) DOES NOT APPLY TO ANY ASSIGNMENT, SALE, OR OTHER TRANSFER OF  
16 THE SERVICING OF A SECONDARY MORTGAGE LOAN TO A LICENSEE OR  
17 REGISTRANT IF THE PERSON MAKING THE SECONDARY MORTGAGE LOAN  
18 PROVIDES WRITTEN NOTICE OF THE TRANSFER TO THE BORROWER AT THE  
19 CLOSING OF THE SECONDARY MORTGAGE LOAN THAT MEETS THE REQUIREMENTS  
20 OF SUBSECTION (2) (N) (iii) .

21 Sec. 27. (1) In addition to the penalties provided by this  
22 act, a violation of this act with respect to a particular secondary  
23 mortgage loan transaction is also subject to the penalty and remedy  
24 provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to  
25 445.1864.

26 (2) A person, association, nonprofit corporation, common law  
27 trust, joint stock company, limited liability company, or any other



1 group of individuals, however organized, or any owner, partner,  
2 member, officer, director, trustee, employee, agent, broker, or  
3 representative thereof who or which willfully or intentionally does  
4 any of the following is guilty of a misdemeanor punishable by a  
5 fine of not more than \$15,000.00, imprisonment for not more than 1  
6 year, or both:

7 (a) Engages in this state in the business of a broker, lender,  
8 or servicer without a license or registration required under this  
9 act.

10 (b) Acts as a secondary mortgage loan officer in this state  
11 and is not a licensed secondary mortgage loan officer under the  
12 mortgage loan originator licensing act.

13 (c) Coerces or induces a real estate appraiser to inflate the  
14 value of real property used as collateral for a secondary mortgage  
15 loan, including, but not limited to, by doing any of the following:

16 (i) Representing or implying that a real estate appraiser will  
17 not be selected to conduct an appraisal of the real property or  
18 selected for future appraisal work unless the appraiser agrees in  
19 advance to a value, range of values, or minimum value for the real  
20 property.

21 (ii) Representing or implying that a real estate appraiser will  
22 not be paid for an appraisal unless the appraiser agrees in advance  
23 to a value, range of values, or minimum value for the real  
24 property.

25 (3) A person who violates this act or directly or indirectly  
26 counsels, aids, or abets in a violation is liable, in addition to  
27 other penalties and forfeitures imposed by this act, for a civil

1 fine of not more than \$3,000.00 for each violation, except that a  
2 person shall not be fined more than \$30,000.00 for a transaction  
3 resulting in more than 1 violation, plus the costs of  
4 investigation. The civil fine shall be sued for and recovered by  
5 the commissioner and shall be collected and enforced by summary  
6 proceedings by the attorney general.

7 (4) Whether or not he or she seeks damages or has an adequate  
8 remedy at law, a person, a county prosecutor, or the attorney  
9 general may bring an action to do any of the following:

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

12 (b) Enjoin a person from engaging in, or who is about to  
13 engage in, a method, act, or practice that violates this act.

14 (c) Recover actual damages resulting from a violation of this  
15 act, **OTHER THAN A VIOLATION OF SECTION 24(2) (I), (M), OR (N),** or  
16 \$250.00, whichever is greater, together with reasonable attorneys'  
17 fees and the costs of bringing the action.

18 **(D) RECOVER ACTUAL DAMAGES RESULTING FROM A VIOLATION OF**  
19 **SECTION 24(2) (I), (M), OR (N), OR \$1,500.00, WHICHEVER IS GREATER,**  
20 **TOGETHER WITH REASONABLE ATTORNEY FEES AND THE COSTS OF BRINGING**  
21 **THE ACTION.**

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