

4038--B

Cal. No. 781

2011-2012 Regular Sessions

I N S E N A T E

March 15, 2011

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the banking law, in relation to the dealings of mortgage brokers and home improvement contractors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The banking law is amended by adding a new section 595-c to
2 read as follows:
3 S 595-C. REGULATION OF DEALINGS OF MORTGAGE BROKERS AND HOME IMPROVE-
4 MENT CONTRACTORS. 1. NO HOME IMPROVEMENT CONTRACTOR NOR ANY AGENTS OR
5 SALESPERSONS THEREOF SHALL REPRESENT, ACT AS AN AGENT FOR, OR ADVERTISE,
6 PROMOTE OR ARRANGE FOR THE SERVICES OF A MORTGAGE BROKER OR ITS AFFIL-
7 IATE WHILE SOLICITING HOME IMPROVEMENT CONTRACTS NOR RECEIVE ANYTHING OF
8 VALUE FROM A MORTGAGE BROKER OR ITS AFFILIATE FOR THE REFERRAL OF A
9 BORROWER TO A MORTGAGE BROKER. THE STAFF OF A HOME IMPROVEMENT CONTRAC-
10 TOR SHALL NOT ACT ON BEHALF OF A MORTGAGE BROKER IN ANY TRANSACTION.
11 2. WHERE A MORTGAGE BROKER HAS SOLICITED, PROCESSED, PLACED OR NEGOTI-
12 ATED A MORTGAGE LOAN, A HOME IMPROVEMENT CONTRACTOR SHALL NOT BE PAID
13 DIRECTLY BUT INSTEAD MAY RECEIVE PAYMENT FROM THE PROCEEDS OF A HOME
14 IMPROVEMENT LOAN PAYABLE SOLELY TO THE BORROWER OR, AT THE ELECTION OF
15 THE BORROWER, THROUGH AN INDEPENDENT THIRD PARTY ESCROW AGENT IN ACCORD-
16 ANCE WITH THE TERMS ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY THE
17 BORROWER, THE LENDER AND THE CONTRACTOR PRIOR TO DISBURSEMENT. A MORT-
18 GAGE BROKER SHALL NOT OFFER A HOMEOWNER DIFFERENT LOAN TERMS CONTINGENT
19 ON THE HOMEOWNER EXECUTING AN AGREEMENT FOR PAYMENT THROUGH AN INDEPEND-
20 ENT THIRD PARTY AS DESCRIBED IN THE PRECEDING SENTENCE. ANY SUCH AGREE-
21 MENT SHALL CONTAIN A CLEAR AND CONSPICUOUS DISCLOSURE: YOU ARE NOT

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 REQUIRED TO EXECUTE THIS AGREEMENT. YOU MAY INSTEAD RECEIVE PAYMENT
2 DIRECTLY. (NAME OF MORTGAGE BROKER) MAY NOT OFFER YOU DIFFERENT TERMS
3 ON YOUR LOAN TO SIGN THIS AGREEMENT.

4 3. A MORTGAGE BROKER SHALL NOT PERMIT A HOME IMPROVEMENT CONTRACTOR TO
5 BE A COSIGNER OR TO ACT AS A GUARANTOR FOR A MORTGAGE LOAN FOR HOME
6 IMPROVEMENT.

7 4. FOR THE PURPOSE OF THIS SECTION, "HOME IMPROVEMENT CONTRACTOR",
8 MEANS, WITH RESPECT TO ANY HOME IMPROVEMENT, A PERSON, FIRM OR CORPO-
9 RATION WHICH OWNS OR OPERATES A HOME IMPROVEMENT BUSINESS OR WHO UNDER-
10 TAKES, OFFERS TO UNDERTAKE OR AGREES TO PERFORM ANY HOME IMPROVEMENT FOR
11 A FEE AND FOR WHOM THE TOTAL PRICE FOR ALL LABOR, MATERIALS AND OTHER
12 ITEMS IS EQUAL TO OR GREATER THAN TWO HUNDRED DOLLARS. HOME IMPROVEMENT
13 CONTRACTOR DOES NOT INCLUDE A PERSON, FIRM, CORPORATION, LANDLORD, COOP-
14 ERATIVE CORPORATION, CONDOMINIUM BOARD OF MANAGERS, JOINT TENANT OR
15 CO-TENANT THAT OWNS, IN WHOLE OR IN PART, THE PROPERTY TO BE IMPROVED.

16 5. THIS SECTION SHALL NOT ANNUL, ALTER, AFFECT OR EXEMPT ANY PERSON
17 SUBJECT TO THE PROVISIONS OF THIS SECTION FROM COMPLYING WITH THE LAWS,
18 ORDINANCES, RULES OR REGULATIONS OF ANY LOCALITY OR OTHER GOVERNMENTAL
19 BODY, RELATING TO HOME IMPROVEMENT CONTRACTS, EXCEPT TO THE EXTENT THAT
20 SUCH LAWS, ORDINANCES, RULES OR REGULATIONS ARE INCONSISTENT WITH ANY
21 PROVISION OF THIS SECTION, BUT NO SUCH LAW, ORDINANCE, RULE OR REGU-
22 LATION SHALL BE CONSIDERED INCONSISTENT, IF IT AFFORDS GREATER
23 PROTECTION TO THE HOMEOWNER FROM PERSONS SUBJECT TO THIS SECTION.

24 S 2. This act shall take effect on the ninetieth day after it shall
25 have become a law.