

4038--A

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

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. A MORTGAGE BROKER SHALL NOT PAY A HOME IMPROVEMENT CONTRACTOR
12 DIRECTLY. A HOME IMPROVEMENT CONTRACTOR MAY RECEIVE PAYMENT FROM THE
13 PROCEEDS OF A HOME IMPROVEMENT LOAN PAYABLE SOLELY TO THE BORROWER OR,
14 AT THE ELECTION OF THE BORROWER, THROUGH AN INDEPENDENT THIRD PARTY
15 ESCROW AGENT IN ACCORDANCE WITH THE TERMS ESTABLISHED IN A WRITTEN
16 AGREEMENT SIGNED BY THE BORROWER, THE LENDER AND THE CONTRACTOR PRIOR TO
17 DISBURSEMENT. A MORTGAGE BROKER SHALL NOT OFFER A HOMEOWNER DIFFERENT
18 LOAN TERMS CONTINGENT ON THE HOMEOWNER EXECUTING AN AGREEMENT FOR
19 PAYMENT THROUGH AN INDEPENDENT THIRD PARTY AS DESCRIBED IN THE PRECEDING
20 SENTENCE. ANY SUCH AGREEMENT SHALL CONTAIN A CLEAR AND CONSPICUOUS
21 DISCLOSURE: YOU ARE NOT REQUIRED TO EXECUTE THIS AGREEMENT. YOU MAY
22 INSTEAD RECEIVE PAYMENT DIRECTLY FROM (NAME OF MORTGAGE BROKER). (NAME

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

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1 OF MORTGAGE BROKER) MAY NOT OFFER YOU DIFFERENT TERMS ON YOUR LOAN TO
2 SIGN THIS AGREEMENT.

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

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

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

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