

HOUSE BILL No. 6061

September 16, 1998, Introduced by Rep. Alley and referred to the Committee on Commerce.

A bill to amend 1981 PA 125, entitled
"The secondary mortgage loan act,"
by amending section 24 (MCL 493.74), as amended by 1997 PA 91.

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 repre-
3 senting an interest in 1 or more secondary mortgage loans before
4 the disbursement of 75% or more of the proceeds of the secondary
5 mortgage loan to, or for the benefit of, the borrower. This sub-
6 section ~~shall~~ DOES not apply to any of the following:

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

9 (b) A loan made under a state or federal government program
10 that allows the lender to escrow more than 25% of the proceeds
11 for a limited period of time.

1 (c) A construction loan.

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

8 (2) It is a violation of this act for a licensee or regis-
9 trant to do any of the following:

10 (a) Suppress or withhold from the commissioner any informa-
11 tion that the licensee or registrant possesses that would make
12 the licensee or registrant ineligible for licensing or registra-
13 tion under this act or would warrant the commissioner's denial of
14 a license or registration application.

15 (b) Violate any provisions of 1966 PA 125, MCL 565.161 to
16 ~~565.163~~ 565.164, regulating the handling of mortgage escrow
17 accounts by mortgagees.

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

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

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

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

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

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

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

1 person has timely and completely satisfied all the conditions of
2 the commitment prior to 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) PROVIDE AN INDIVIDUAL WITH EITHER OF THE FOLLOWING:

10 (i) AN UNSOLICITED BLANK CHECK THAT WOULD ENABLE THE INDI-
11 VIDUAL TO INCUR A NEW OR ADDED DEBT BURDEN SOLELY BY IDENTIFYING
12 A PAYEE AND ENDORSING THE CHECK.

13 (ii) AN UNSOLICITED CHECK IN A FIXED AMOUNT THAT WOULD
14 ENABLE THE INDIVIDUAL TO INCUR A NEW OR ADDED DEBT SOLELY BY
15 ENDORSING THE CHECK.