

CHAPTER 305. LOAN BROKER TRADE PRACTICES

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Authority

The provisions of this Chapter 305 issued under the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—201-9.2), unless otherwise noted.

Source

The provisions of this Chapter 305 adopted August 15, 1986, effective August 16, 1986, 16 Pa.B. 3040, unless otherwise noted.

Notes of Decisions

This chapter does not violate the equal protection, due process or contract clause of the Constitution. *Pennsylvania Mortgage Bankers Association v. Zimmerman*, 664 F. Supp. 186, 191 (1987).

§ 305.1. Scope.

This chapter establishes what are determined to be unfair methods of competition and unfair or deceptive acts or practices by loan brokers, but may not be interpreted to limit the power of the Attorney General to determine that another practice is unlawful under sections 1—9.2 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—201-9.2).

§ 305.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Borrower—A person seeking the services of a loan broker.

Fee—oney or other valuable consideration paid or promised to be paid by a borrower for services rendered or to be rendered by a person acting as a loan broker as that term is defined in this chapter. The term does not include a *bona fide* fee or expense paid by a borrower which the loan broker pays to a third party specifically for credit reporting and appraisal services.

Loan—An agreement to advance money secured by owner-occupied single-family residential real estate in return for the promise that the money shall be repaid and that payments shall be made for the use of the money.

Loan broker—A person, copartnership, association or corporation engaged in providing services for the purpose of procuring or attempting to procure a loan on behalf of a borrower where a fee or other valuable consideration is charged for the services. The term does not include a person, copartnership, association or corporation expressly regulated by a regulatory body or officer of this Com-

monwealth or of the United States, such as State and nationally chartered banks, savings and loan associations and their regulated subsidiaries.

§ 305.3. General provisions.

(a) With respect to a loan broker, the following are considered unfair methods of competition and unfair or deceptive acts or practices:

- (1) Employing a device, scheme or artifice to defraud.
- (2) Making false or misleading statements of fact or omitting material facts in order to make a statement not misleading.
- (3) Engaging in an act, practice or course of conduct which creates a likelihood of confusion or misunderstanding.
- (4) Failing to use due diligence and make reasonable efforts to procure a loan on behalf of a borrower.
- (5) Retaining a fee paid by a borrower to the loan broker where a loan is not procured within the time specified by the loan broker at the rate, term and overall cost agreed to by the loan broker and borrower, regardless of an express written agreement to the contrary. This paragraph does not apply if the failure to procure a loan is due solely to the borrower's negligence or outright refusal to provide information specifically requested by the loan broker.
- (6) Failing to escrow a fee which is paid by the borrower prior to procuring a loan in an interest bearing account of an institution regulated by the Federal Reserve Board, the Federal Home Loan Bank Board, Comptroller of the Currency or the Department of Banking.
- (7) Failing to promptly refund to the borrower an escrowed amount with interest if a loan is not procured as set forth in paragraph (5).

(b) This section may not be interpreted to limit the power of the Attorney General to determine that another practice is unlawful under sections 1—9.2 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—201-9.2).

§ 305.4. Waiver of rights.

A waiver of this chapter by a borrower prior to or at the time of entering into an agreement with a loan broker is contrary to public policy and is void. An attempt by a loan broker to have a borrower waive his rights under this chapter shall be deemed to be fraudulent conduct under section 201-2(4)(xvii) of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-2(4)(xvii)).

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