

# State of Wisconsin



2009 Assembly Bill 471

Date of enactment: **March 15, 2010**

Date of publication\*: **March 29, 2010**

## 2009 WISCONSIN ACT 188

AN ACT *to amend* 224.79 (title); and *to create* 224.79 (3) of the statutes; **relating to:** mortgage broker duties and agency relationships.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 224.79 (title) of the statutes is amended to read:

**224.79 (title) Mortgage brokerage agreements and disclosures; mortgage broker agency relationship and duties.**

**SECTION 2.** 224.79 (3) of the statutes is created to read:

**224.79 (3) MORTGAGE BROKER AGENCY RELATIONSHIP AND DUTIES.** (a) In this subsection, "borrower" means the residential mortgage loan applicant or investor on whose behalf a mortgage broker provides, or contracts to provide, mortgage brokerage services.

(b) A mortgage broker, at all times when acting in the capacity of a mortgage broker, has an agency relationship with the borrower.

(c) A mortgage broker owes all of the following duties to the borrower:

1. The mortgage broker shall act in the borrower's best interest and in the utmost good faith toward the borrower, and may not compromise the borrower's rights or interests in favor of another's rights or interests, including those of the mortgage broker.

2. The mortgage broker may not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, through direct or indirect

means, that inures to the benefit of the mortgage broker on an expenditure made for the borrower.

3. The mortgage broker shall carry out all lawful instructions given by the borrower.

4. The mortgage broker shall disclose to the borrower all material facts of which the mortgage broker has knowledge that might reasonably affect the borrower's rights or interests or ability to receive the borrower's intended benefit from the residential mortgage loan, but not facts that are reasonably susceptible to the knowledge of the borrower.

4m. The mortgage broker shall present loan options in an objective and unbiased manner and disclose the advantages and disadvantages of each loan option.

5. The mortgage broker shall use reasonable care in performing the mortgage broker's duties.

6. The mortgage broker shall account to the borrower for all money and property received by the mortgage broker as the borrower's agent.

(d) Nothing in this subsection prohibits a mortgage broker from contracting or collecting a fee for services provided, if the services were disclosed to the borrower before they were provided.

(e) Nothing in this subsection requires a mortgage broker to obtain a residential mortgage loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business or to obtain a residential mortgage loan for the borrower from

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

**2009 Wisconsin Act 188**

**2009 Assembly Bill 471**

a mortgage lender with whom the mortgage broker does not have a business relationship.

(f) The duties imposed under par. (c) may not be waived.

(g) Every contract under sub. (1), and every disclosure statement under sub. (2), shall identify the agency

relationship described in par. (b) and the mortgage broker's duties imposed under par. (c).

**SECTION 3. Effective date.**

(1) This act takes effect on January 1, 2010, or on the first day of the 3rd month beginning after publication, whichever is later.

