

Regular Session, 2011

SENATE BILL NO. 186

BY SENATOR CLAITOR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS. Prohibits kickbacks, unearned fees, and required use of settlement service providers concerning the sale or purchase of residential real estate or in connection with a transaction involving a federally related mortgage loan. (8/15/11)

1 AN ACT

2 To enact R.S. 51:1428, relative to unfair trade practices and consumer protection; to prohibit  
3 kickbacks, unearned fees, and required use of settlement service providers in  
4 residential real estate transactions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 51:1428 is hereby enacted to read as follows:

7 **§1428. Unfair or deceptive acts or practices; prohibition against kickbacks,**  
8 **unearned fees, and required use of settlement service providers in residential**  
9 **real estate transactions**

10 **A. For the purposes of this Section, the following terms and phrases**  
11 **shall have the following meanings:**

12 **(1) "Purchaser" means any person who, using the proceeds of a federally**  
13 **related mortgage loan, contracts to acquire residential real estate in this state.**

14 **(2) "Residential real estate" means any immovable property in this state**  
15 **upon which at least one, but not more than four buildings or structures are**  
16 **situated, each of which are occupied or intended for occupancy as single family**  
17 **residences.**

1                   **(3) "Federally related mortgage loan" means any loan defined as a**  
2                   **"federally related mortgage loan" under the provisions of 12 U.S.C. §2602(1)**  
3                   **of the Real Estate Settlement Procedure Act.**

4                   **(4) "Settlement services" means any service defined as a "settlement**  
5                   **service" under the provisions of 12 U.S.C. §2602(1) of the Real Estate Settlement**  
6                   **Procedure Act.**

7                   **(5) "Settlement statement" means any form approved under the**  
8                   **provisions of 12 U.S.C. §2602(1) of the Real Estate Settlement Procedure Act for**  
9                   **use in residential real estate transactions involving federally related mortgage**  
10                  **loans.**

11                  **(6) "Thing of value" includes any payment, advance, funds, loan, service,**  
12                  **or other consideration.**

13                  **(7) "Title company" means any person qualified to issue title insurance**  
14                  **in this state, directly or through its agents, and also refers to any duly**  
15                  **authorized agent of a title company.**

16                  **B. No person shall give and no person shall accept any of the following:**

17                  **(1) Any fee, kickback, or thing of value pursuant to any agreement or**  
18                  **understanding, oral or otherwise, that business incident to or a part of a**  
19                  **settlement service involving a federally related mortgage loan shall be referred**  
20                  **to any person.**

21                  **(2) Any portion, split, or percentage of any charge made or received for**  
22                  **the rendering of a settlement service in connection with a transaction involving**  
23                  **a federally related mortgage loan other than for services actually performed.**

24                  **C. No contract to sell or purchase residential real estate executed in this**  
25                  **state shall contain any provision requiring the purchaser of such residential**  
26                  **property, as a condition of such sale, to use a specific provider of settlement**  
27                  **services.**

28                  **D. No person shall deprive, impair, diminish, or otherwise limit the**  
29                  **access of a purchaser of residential real estate to any service, discount, rebate,**

1        or other economic incentive by making such access contingent on that  
2        purchaser's use of a specific provider of settlement services.

3                E. No person shall impose upon a purchaser of residential real estate an  
4                economic disincentive or penalty based on the failure or refusal of such  
5                purchaser to use a specific provider of settlement services.

6                F. The provisions of this Section shall not be interpreted or construed to  
7                prohibit any of the following:

8                        (1) The payment of attorney fees for services actually rendered.

9                        (2) The payment of a fee by a title company to its duly appointed agent  
10                      for services actually performed in the issuance of a policy of title insurance.

11                      (3) The payment by a lender to its duly appointed agent for services  
12                      actually performed in the making of a loan.

13                      (4) The payment to any person of a bona fide salary or compensation or  
14                      other payment for goods or facilities actually furnished or for services actually  
15                      performed.

16                      (5) Payments made pursuant to cooperative brokerage and referral  
17                      arrangements, or agreements between real estate agents and brokers.

18                G. Any violation of this Section shall be a deceptive and unfair trade  
19                practice and shall subject the violator to any and all penalties provided for in  
20                this Chapter.

The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Alan Miller.

#### DIGEST

Proposed law prohibits any person from giving or accepting any of the following:

1. Any fee, kickback, or thing of value pursuant to any agreement or understanding that business incident to or a part of a settlement service involving a federally related mortgage loan shall be referred to any person.
2. Any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

Proposed law prohibits any contract to sell or purchase residential real estate executed in this state from containing any provision requiring the purchaser, as a condition of such sale, to

use a specific provider of settlement services.

Proposed law prohibits any person from depriving, impairing, diminishing, or otherwise limiting the access of a purchaser of residential real estate to any service, discount, rebate, or other economic incentive by making such access contingent on that purchaser's use of a specific provider of settlement services.

Proposed law prohibits any person from imposing upon a purchaser of residential real estate an economic disincentive or penalty based on the failure or refusal of such purchaser to use a specific provider of settlement services.

Proposed law provides that proposed law shall not be interpreted or construed to prohibit any of the following:

1. The payment of attorney fees for services actually rendered.
2. The payment of a fee by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance.
3. The payment by a lender to its duly appointed agent for services actually performed in the making of a loan.
4. The payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
5. Payments made pursuant to cooperative brokerage and referral arrangements, or agreements between real estate agents and brokers.

Proposed law provides that any violation of proposed law shall be a deceptive and unfair trade practice and shall subject the violator to any and all penalties provided for in the Unfair Trade practices and Consumer Protection Law.

Effective August 15, 2011.

(Adds R.S. 51:1428)