

ATTORNEY AT LAW

Ernest B. Fenton

REAL ESTATE & BUSINESS ATTORNEY

NEWS LETTER MARCH 2005

THE ADVERSE EFFECT OF POOR MORTGAGE BROKER PRACTICES

By: The Law Office of Ernest B. Fenton

My name is Attorney Ernest B. Fenton. I am a real estate attorney. My firm represents home buyers and sellers with personal or investment property transactions.

The purpose of this article is to discuss how certain practices of mortgage brokers (hereinafter brokers) adversely affect the real estate industry. More particularly, I will address how brokers are engaging in the unauthorized practice of law, and why? And, in sum, I will illuminate many of the effects or consequences of these practices.

In conclusion, I desire that you as the reader have a greater appreciation of the importance of brokers' acting in the best interest of their clients by adhering to the rules, regulations, and fiduciary responsibilities of their profession. (See Illinois Residential Mortgage License Act of 1987).

Simplistically stated, brokers are primarily retained for their expertise of lending issues (rates, loan programs, etc.) and for their generally greater knowledge of, and relationship with, specific lenders. More importantly, they are retained to leverage their superior knowledge and relationships for the greater good of the client. Moreover, their duties include facilitating the transaction by fulfilling the conditions or stipulations of the lender that must be met prior to final approval of financing.

Conversely, in providing brokering services to a client it is not the responsibility or within the auspices of a broker to provide legal advice or opinion. To do so, is the unauthorized practice of law. Subsequently, a broker cannot "close" a transaction for a client. An act as seemingly innocent as reviewing or explaining the Truth in Lending Disclosure is actionable.

In carrying out their functions, brokers are, foremost, bound by and guided by principles of ethics, fair dealing and loyalty to the client. Thus, if a broker were to steer a client to a particular lender because they were allowed to profit more on the yield spread, that would constitute a breach of duty.

Other issues include a practice in which members of minority groups are not denied credit, but are extended credit on unfavorable terms. This practice is called Reverse Redlining. Consumer Fraud and Deceptive Business Practice Act violations related to mortgage practices are: (1) Last minute addition of fees and charges, and (2) Bait-and-Switch practices and failing to honor practices relating to interest rates.

Beyond that, there is the practice of brokers influencing clients not to retain counsel under the pretense of it not being necessary. In this

instance, the broker may ensure the client that they can serve the purpose of an attorney (i.e. policing themselves!), making it prime time to charge excessive fees, engage in equity skimming scams, etc..

Ultimately, the greatest injustice occurs when homeowners find themselves in foreclosure. At this point, homeowners will usually scrutinize the transaction more closely. Particularly, they will look at the work and results of the broker. Unfortunately, what is too often discovered after further inquiry and review is some level of broker impropriety.

In conclusion, the overriding themes of responsibility and professionalism outlined in this article do not end merely because "it's business." The implications of the practices of the mortgage broker are far reaching. Their effects extend well beyond Good Faith Estimates, legal descriptions on a page, or a HUD-1 statement.

Brokers are entrusted, to some extent, with the more delicate and important assets of their clients': the fruit of their life work, the stability of their family, and peace of mind. Something we all understand and value.

Subsequently, we can also all understand and value the necessity to promote the good business practice of mortgage brokers'. In the end, it only makes sense to do what's in the best interest of the client, business, and our industry.

For information on scheduling a FREE seminar on: The Attorney's Role in the Real Estate Transaction Understanding the Foreclosure Process, or another topic, please feel free to contact us.

THE LAW OFFICE OF ERNEST B. FENTON
18110 S. Dixie Highway, Suite 1S • Homewood, IL 60430
(708) 991-7268 Business • (708) 991-7943 Facsimile
attorneyfenton@yahoo.com

