

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Delmore

1 A BILL for an Act to create and enact two new sections to chapter 13-04.1 of the North Dakota  
2 Century Code, relating to duties of mortgage brokers; and to amend and reenact section  
3 13-04.1-01.1 of the North Dakota Century Code, relating to the definition of mortgage broker.

### 4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 13-04.1-01.1 of the North Dakota Century Code  
6 is amended and reenacted as follows:

7 **13-04.1-01.1. Definitions.** As used in this chapter, unless the context or subject matter  
8 otherwise requires:

- 9 1. "Borrower" means a person ~~or entity~~ that seeks out, or is solicited by a money  
10 broker for the purpose of money brokering.
- 11 2. "Commissioner" means the commissioner of financial institutions.
- 12 3. "Money broker" means a person ~~or entity who~~ that, in the ordinary course of  
13 business, engages in money brokering.
- 14 4. "Money brokering" means the act of arranging or providing loans or leases as a  
15 form of financing, ~~or~~ advertising, or soliciting either in print, by letter, in person, or  
16 otherwise, the right to find lenders or provide loans or leases for persons ~~or~~  
17 ~~businesses~~ desirous of obtaining funds for any ~~purposes~~ purpose.
- 18 5. "Mortgage broker" means a money broker that helps to obtain from another  
19 person, for a borrower, a residential mortgage loan or which assists a borrower in  
20 obtaining a residential mortgage loan in return for consideration to be paid by the  
21 borrower or lender or both. The term includes soliciting, placing, or negotiating a  
22 residential mortgage loan.

23 **SECTION 2.** A new section to chapter 13-04.1 of the North Dakota Century Code is  
24 created and enacted as follows:

**Mortgage broker - Duties of agency.**

1. A mortgage broker is deemed to have created an agency relationship with the borrower in all cases and shall comply with the following duties:

- a. A mortgage broker shall act in the borrower's best interest and in the utmost good faith toward borrowers, and may not compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker. A mortgage broker may not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, either through direct or indirect means that inures to the benefit of the mortgage broker on an expenditure made for the borrower.
- b. A mortgage broker shall carry out all lawful instructions given by borrowers.
- c. A mortgage broker shall disclose to a borrower all material facts of which the mortgage broker has knowledge which might reasonably affect the borrower's rights, 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.
- d. A mortgage broker shall use reasonable care in performing duties.
- e. A mortgage broker shall account to a borrower for all the borrower's money and property received as agent.

2. The duty of agency between mortgage broker and borrower applies when the mortgage broker is acting in the capacity of a mortgage broker.

3. This section does not prohibit a mortgage broker from contracting for or collecting a fee for services rendered if the fee is disclosed to the borrower in advance of the provision of the services.

4. This section does not require a mortgage broker to obtain a loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business or to obtain a loan for the borrower from a mortgage lender with whom the mortgage broker does not have a business relationship.

**SECTION 3.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

**Mortgage broker - Duties.** A mortgage broker:

- 1           1. May not make, provide, or arrange for a residential mortgage loan without verifying  
2           the borrower's reasonable ability to pay the scheduled payments of the following,  
3           as applicable: principal; interest; real estate taxes; and homeowner's insurance,  
4           assessments, and mortgage insurance premiums. For loans in which the interest  
5           rate may vary, the reasonable ability to pay is determined based on a fully indexed  
6           rate and a repayment schedule that achieves full amortization over the life of the  
7           loan. For all residential mortgage loans, the borrower's income and financial  
8           resources must be verified by tax returns, payroll receipts, bank records, or other  
9           similarly reliable documents. This subsection does not limit a mortgage broker's  
10           ability to rely on criteria other than the borrower's income and financial resources to  
11           establish the borrower's reasonable ability to repay the residential mortgage loan;  
12           however, such other criteria must be verified through reasonably reliable methods  
13           and documentation. A statement by the borrower to the mortgage broker of the  
14           borrower's income and resources is not sufficient to establish the existence of the  
15           income or resources when verifying the reasonable ability to pay. As used in this  
16           subsection, a fully indexed rate equals the index rate prevailing at the time a  
17           residential mortgage loan is originated, plus the margin that will apply after the  
18           expiration of an introductory rate.
- 19           2. May not engage in churning. As used in this section, "churning" means knowingly  
20           or intentionally making, providing, or arranging for a residential mortgage loan  
21           when the new residential mortgage loan does not provide a reasonable, tangible  
22           net benefit to the borrower considering all of the circumstances, including the terms  
23           of both the new and refinanced loans, the cost of the new loan, and the borrower's  
24           circumstances.
- 25           3. For the first time a mortgage broker orally informs a borrower of the anticipated or  
26           actual periodic payment amount for a first-lien residential mortgage loan which  
27           does not include an amount for payment of property taxes and hazard insurance,  
28           shall inform the borrower that an additional amount will be due for taxes and  
29           insurance and, if known, disclose to the borrower the amount of the anticipated or  
30           actual periodic payments for property taxes and hazard insurance. The mortgage  
31           broker shall make this oral disclosure each time the mortgage broker orally informs

- 1           the borrower of a different anticipated or actual periodic payment amount change  
2           from the amount previously disclosed. A mortgage broker is not required to make  
3           this disclosure concerning a refinancing loan if the mortgage broker knows the  
4           borrower's existing loan that is anticipated to be refinanced does not have an  
5           escrow account.
- 6           4. Other than for a reverse mortgage, pursuant to United States Code, title 15,  
7           chapter 41, may not make, provide, or arrange for a residential mortgage loan if the  
8           borrower's compliance with any repayment option offered pursuant to the terms of  
9           the loan will result in negative amortization during any six-month period.