CHAPTER 36

Loan Brokers

**SECTION 34‑36‑10.** Definitions.

 As used in this chapter, unless the context otherwise requires:

 (1) “Advance fee” means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker.

 (2) “Borrower” means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

 (3) “Department” means the Department of Consumer Affairs.

 (4) “Loan broker” means any person who:

 (a) for or in expectation of consideration arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

 (b) for or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

 (c) acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

 (d) holds himself out as a loan broker.

 A “loan broker” does not include any bank or savings and loan association, trust company, building and loan association, credit union, consumer finance company, retail installment sales company, securities broker‑dealer, real estate broker or salesperson, attorney, Federal Housing Administration or Veterans Administration approved lender, credit card company, installment loan licensee, mortgage loan broker registered under Chapter 58, Title 40 and acting within the scope of its certificate of registration, or insurance company, who is licensed by and subject to regulation or supervision of any agency of the United States, the South Carolina Board of Financial Institutions, or other agency of this State and is acting within the scope of the license; and also does not include subsidiaries of licensed or chartered consumer finance companies, banks, or savings and loan associations.

 (5) “Principal” means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

Federal Aspects

Federal Housing Administration, see 42 U.S.C.A. Section 3533.

Veterans Administration home loans, see 38 U.S.C.A. Sections 1810 et seq.

LIBRARY REFERENCES

12 C.J.S., Brokers Sections 2, 5.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:7, Brokering Mortgage Loans.

**SECTION 34‑36‑20.** Prohibited behavior; advance fees; false, misleading, fraudulent, or deceptive acts.

 No loan broker shall:

 (1) assess or collect an advance fee from a borrower to provide services as a loan broker.

 (2) make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a loan broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan broker, notwithstanding the absence of reliance by the buyer.

 (3) make or use any false or deceptive representation or conceal a material fact in its business dealings with the borrower or with the department.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

CROSS REFERENCES

Order to loan broker to refund or reimburse fee taken in violation of this section, see Section 34‑36‑40.

LIBRARY REFERENCES

12 C.J.S., Brokers Sections 6, 13.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:7, Brokering Mortgage Loans.

**SECTION 34‑36‑30.** Principal responsible for acts of brokers and brokers’ agents or employees.

 Each principal of a loan broker may be sanctioned for the actions of the loan broker, including the loan broker’s agents or employees acting in the course of business of the loan broker.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

LIBRARY REFERENCES

12 C.J.S., Brokers Sections 91 et seq.

**SECTION 34‑36‑40.** Department oversight; orders and acts to effect compliance.

 (A) The department may investigate the actions of any person for compliance with this chapter.

 (B) The department may request a hearing before the Administrative Law Court for an order requiring a loan broker to cease and desist if it is determined that the loan broker has violated, is violating, or will violate a provision of this chapter, a regulation promulgated by the department, or a written agreement entered into with the department.

 (C) The department may request a hearing before the Administrative Law Court for an order requiring a loan broker to refund or reimburse any advance fee or any other fee taken in violation of Section 34‑36‑20 or taken as a result of a false, misleading, or deceptive representation as described in Section 34‑36‑20. Such an order may, but need not, be sought by the department in conjunction with a cease and desist order pursuant to subsection (B).

 (D) The department may request a contested case hearing before the Administrative Law Court seeking the imposition of a civil administrative fine on behalf of the department against any person found to have violated any provision of this chapter, any regulation promulgated by the department, or any written agreement entered into with the department, in any amount not to exceed five thousand dollars for each violation.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992; 2005 Act No. 128, Section 2, eff July 1, 2005.

Editor’s Note

2005 Act No. 128, Section 27, provides as follows:

“This act takes effect on July 1, 2005, and applies to all licensing and administrative hearings involving the South Carolina Department of Consumer Affairs.”

Effect of Amendment

The 2005 amendment, in subsections (B), (C) and (D), added the references to hearings before the Administrative Law Court and made conforming amendments.

LIBRARY REFERENCES

12 C.J.S., Brokers Section 13.

**SECTION 34‑36‑50.** Investigations and examinations to determine violations; obtaining evidence; witnesses and subpoenas; confidentiality; injunctions and other means of enforcement; cooperation with other enforcement agencies.

 (A) The department may make investigations and examinations upon reasonable suspicion within or outside of this State as it considers necessary to determine whether a person has violated or will violate any provision of this chapter or any regulation promulgated hereunder.

 (B) The department may gather evidence regarding any broker if the department has reasonable suspicion the loan broker has violated or will violate any provision of this chapter or any regulation promulgated under it. The department may administer oaths, examine witnesses, and issue subpoenas.

 (C) The department may issue subpoenas for witnesses whose evidence is deemed material to any investigation or examination commanding the witnesses to be or appear before the department at a time and place named and to bring those books, records, and documents as may be specified or to submit the books, records, and documents for inspection. The subpoenas may be served by an authorized representative of the department.

 (D) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued by the department, the department may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the person to appear and fully comply with the subpoena. The court may also grant injunctive relief restraining a violation of this chapter and may grant that other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of the person’s assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate until the person has fully complied with the subpoena or subpoena duces tecum and the department has completed its investigation or examination. Costs incurred by the department to obtain an order granting, in whole or in part, the petition for enforcement of a subpoena or subpoena duces tecum must be taxed against the subpoenaed person, and failure to comply with the order is a contempt of court.

 (E) Witnesses are entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where the examination or investigation is held at the place of business or residence of the witness.

 (F) The material compiled by the department in an investigation or examination under this chapter is confidential until the investigation or examination is complete or final action by the department is otherwise taken. The investigation or examination is not deemed complete if the department has submitted the material or any part of it to any law enforcement agency or other regulatory agency for further investigation or for the filing of a criminal or civil prosecution and the investigation and prosecution have not been completed or become inactive. This confidentiality provision shall not prohibit:

 (1) the disclosure of investigative material in investigations that are otherwise final if the material submitted to the other law enforcement agency is not directly related to loan brokering business; or

 (2) the disclosure of such material as is public information after civil or criminal prosecution is filed.

 (G) The department shall cooperate with and assist other state or federal agencies in enforcing applicable regulation of loan brokers to the extent such cooperation and assistance does not violate this chapter or the public policy of this State. The department may authorize such state or federal agencies to represent it for the purpose of administering oaths, examining witnesses, or issuing subpoenas under this chapter.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

**SECTION 34‑36‑60.** Actions to enjoin violations; impounding of property; appointment of receiver or administrator; order of restitution.

 (A) In addition to other remedies set forth in this chapter, whenever the department determines, from evidence satisfactory to it, that any person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of this chapter or a regulation promulgated hereunder, the department may bring action in the name and on behalf of the State against the person and any other person concerned in that practice in violation of this chapter to enjoin the person or persons from continuing the violation. In the court proceedings, the department may apply for and on due showing is entitled to have issued, the court’s subpoena requiring the appearance of any defendant and his employees or agents to testify or give evidence concerning the acts or conduct or things complained of in the application for injunction, and requiring the production of documents, books, and records that may appear necessary for the hearing of the petition.

 (B) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in the court proceedings, the court shall have the power, upon application of the department, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. The receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of this property and business as is from time to time conferred upon him by the court. In the action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver’s or administrator’s custody or possession of this property, assets, and business, or in its discretion may with the consent of the chief administrative judge of the circuit, require that all these suits be assigned to the circuit court judge appointing this receiver or administrator.

 (C) In addition to any other remedies provided by this chapter, the department may apply to the court hearing this matter for an order of restitution whereby the defendants in the action must be ordered to make restitution of those sums shown by the department to have been obtained by them in violation of any of the provisions of this chapter. The restitution, at the option of the court, must be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

**SECTION 34‑36‑70.** Violations; penalties.

 Any person violating any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding five thousand dollars or by a term of imprisonment not exceeding one year, or both. Each violation of this chapter constitutes a separate offense.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

LIBRARY REFERENCES

12 C.J.S., Brokers Section 13.

**SECTION 34‑36‑80.** Violation constitutes unfair trade practice; actions for damages; remedies additional to those otherwise provided.

 (A) A violation of this chapter shall constitute an unfair trade practice under Chapter 5, Title 39, and individual borrowers or prospective borrowers injured by violations of this chapter have an action for damages as set forth in Section 39‑5‑140.

 (B) Any borrower injured by a violation of this chapter may bring an action against the surety bond or trust account, if any, of the loan broker.

 (C) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct authorized by law.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

**SECTION 34‑36‑90.** Department responsible for administration and enforcement of chapter; authority to promulgate regulations.

 (A) The department is responsible for the administration and enforcement of this chapter.

 (B) The department is authorized to promulgate those regulations necessary to implement and administer the provisions of this chapter.

HISTORY: 1992 Act No. 452, Section 1, eff June 15, 1992.

LIBRARY REFERENCES

12 C.J.S., Brokers Section 6.