

1997 BILL 212

First Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 212

LOAN BROKERS ACT

MS. KRYCZKA

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 212
Ms. Kryczka

BILL 212

1997

LOAN BROKERS ACT

(Assented to , 1997)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "consumer" means an individual who is acting other than in the course of business;
- (b) "Court" means the Court of Queen's Bench;
- (c) "loan" means a loan of money;
- (d) "loan broker" means a person who
 - (i) carries on the business of providing services or goods to a consumer to assist the consumer in obtaining a loan from another person, or
 - (ii) holds oneself out to be a person described in subclause (i),but does not include a mortgage broker as defined in the *Real Estate Act*;
- (e) "Minister" means the member of the Executive Council who is charged with the administration of this Act;

- (f) "services" includes
 - (i) referring a consumer to a lender or potential lender,
 - (ii) referring a lender or potential lender to a consumer, or
 - (iii) providing a lender, potential lender or consumer with information about the other.

Advance
payments
prohibited

2(1) No loan broker shall require or accept any payment or any security for a payment, either directly or indirectly, from or on behalf of a consumer in respect of a loan until the consumer has actually received the loan.

(2) Every arrangement or agreement for a payment or for security that contravenes subsection (1) is void.

Disclosure of
charges

3 Before providing services or goods to a consumer to assist the consumer in obtaining a loan from another person, the loan broker shall provide the consumer with a clear statement in writing showing

- (a) the name, address and telephone number of the loan broker,
- (b) the name of the consumer,
- (c) if known, the name, address and telephone numbers of the persons from whom the loan broker will attempt to obtain the loan for the consumer,
- (d) the amount of the loan,
- (e) the date by which the loan is to be made to the consumer, and
- (f) the amount the broker will charge the consumer for arranging the loan, expressed as a sum in dollars and as a percentage of the loan.

Civil Remedies

Demands

4(1) A loan broker who receives payment in contravention of

section 2(1) shall, on the demand of the person who made the payment, refund it to the person.

(2) A loan broker who receives security for a payment in contravention of section 2(1) shall, on the demand of the person who provided the security, return it to the person.

(3) A demand for a refund or for the return of security may be made in writing, verbally or by any other means.

(4) A demand for a refund or for the return of security shall be deemed to have been received

(a) on the day that it was sent, if it was made by registered or electronic mail, or

(b) on the day that it was made, if it was made in the form of a verbal message left on a telephone answering device or system or left with a message service.

(5) A loan broker who receives a demand for a refund or for the return of security shall make the refund or return the security, as the case may be, within 5 days of receiving the demand.

Recovery of
payment

5(1) If a loan broker has received a payment in contravention of section 2(1), the person who made the payment may recover it in full in a court of competent jurisdiction, whether the person has made a demand for a refund or not.

(2) In a judgment for the recovery of a payment under subsection (1), the court shall order that the plaintiff recover the payment in full without any reduction for services or goods that the defendant may have provided to the plaintiff in respect of the payment.

Return of
security

6(1) If a loan broker has received security for a payment in contravention of section 2(1), the person who provided the security may obtain a judgment from a court of competent jurisdiction, whether the person has made a demand for the return of the security or not.

(2) Subject to subsection (3), in a judgment under subsection (1), the court shall order that the defendant return the security to the plaintiff without any compensation for services or goods that the defendant

may have provided to the plaintiff in respect of the payment mentioned in subsection (1).

(3) If the defendant has disposed of the security in whole or in part, the court shall order that the plaintiff recover from the defendant the monetary value of the security without any reduction for services or goods that the defendant may have provided to the plaintiff in respect of the payment mentioned in subsection (1).

Officers,
directors

7 The officers and directors of a loan broker that is a corporation are jointly and severally liable for the remedy in respect of which a person is entitled to commence a proceeding against the loan broker under section 5 or 6.

No waiver

8 This Act applies despite any agreement or waiver to the contrary.

Enforcement

Inspectors

9(1) The Minister may appoint one or more inspectors for the purposes of this Act.

(2) The Minister shall issue to every inspector a certificate of appointment bearing the Minister's signature or a facsimile of it.

(3) Peace officers are, by virtue of office, inspectors for the purpose of this Act, but subsection (2) does not apply to them.

(4) Every inspector who exercises powers under this Act shall, upon request, produce the certificate of appointment as an inspector or identification as a peace officer, as the case may be.

Inspection

10(1) An inspector may enter and inspect the premises of a loan broker to ensure compliance with this Act.

(2) An inspection under subsection (1) may be conducted only if

(a) the loan broker is given reasonable notice of the inspection, and

(b) the inspection is conducted at a reasonable time.

(3) An inspector who makes an inspection under subsection (1) may inspect, examine and make copies of or temporarily remove books, records or documents that are relevant to any matter or thing done by a loan broker.

(4) When an inspector removes any books, records or documents under subsection (3), the inspector

- (a) must give to the person from whom they were taken a receipt for them,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

Order allowing
inspection

11(1) If a person

- (a) refuses to allow an inspector to enter the premises of a loan broker, or
- (b) refuses to produce anything requested by the inspector to assist in an inspection under section 10,

the inspector may apply to the Court by originating notice for an order under subsection (2).

(2) The Court may make an order

- (a) restraining a person from preventing entry by the inspector or from interfering with the inspector's inspection, and
- (b) requiring the production of anything to assist in the inspection.

(3) The order may be granted without notice if the Court is satisfied that giving notice would result in the loss or destruction of evidence.

Initiating
investigation

12 The Minister may on receipt of a complaint, or when the Minister considers it necessary without a complaint, direct an inspector to investigate any matter or thing done by a loan broker.

Order to assist
investigation

13(1) When a person is being investigated, an inspector may apply to the Court by originating notice for an order

- (a) compelling the person or the person's agent to allow the inspector to enter the person's or agent's premises for the purposes of the investigation and requiring the person or agent to produce for the inspector's examination the person's or agent's books, records or documents relevant to the investigation and authorizing the inspector to copy them or remove them on such terms as the Court considers appropriate;
- (b) authorizing the inspector to inquire into and examine the business affairs of the person or the person's agent and directing the person or person's agent to co-operate with the investigation on such terms as the Court considers appropriate.

(2) The Court may grant an order under subsection (1) if satisfied on evidence under oath by an inspector that there are reasonable grounds to believe

- (a) that the person being investigated or the person's agent has not co-operated or likely will not co-operate with the investigation, and
- (b) that the order is appropriate in the circumstances.

(3) The order may be granted without notice if the Court is satisfied that giving notice could result in the loss or destruction of evidence.

Injunction

14(1) Where, on the application of the Minister by originating notice, it appears to the Court that a person has done, is doing or is about to do any thing that constitutes or is directed toward a contravention of this Act, the Court may issue an injunction ordering any person named in the application

- (a) to refrain from doing that thing, or
- (b) to do any thing that in the opinion of the Court may prevent the contravention of this Act.

(2) At least 48 hours' notice of the application must be given to the party or parties named in the application unless the Court is of the opinion that the urgency of the situation is such that giving notice would not be in the public interest.

Offences

15(1) Every person who contravenes section 2(1), 3 or 4(5) is guilty of an offence.

(2) Every officer or director of corporation is guilty of an offence who,

(a) knowingly causes, authorizes, permits or participates in the commission by the corporation of an offence mentioned in subsection (1), or

(b) fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1).

(3) A person who is not a corporation and who is convicted of an offence under this Act is liable to a fine of not more than

(a) \$25 000, or

(b) 3 times the amount the defendant acquired as a result of the offence,

whichever is greater, or to imprisonment for a term of not more than one year, or both.

(4) A corporation convicted of an offence under this Act is liable to a fine of not more than

(a) \$100 000, or

(b) 3 times the amount the defendant acquired as a result of the offence,

whichever is greater.

(5) A prosecution under this Act may be commenced within **2 years** from the date on which the offence is alleged to have **been** committed.

Regulations

16 The Lieutenant Governor in Council may make regulations

- (a) exempting any person or class of persons from any or all of the provisions of this Act and the regulations;
- (b) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Coming into
force

17 This Act comes into force on Proclamation.