

By Mr. White, a petition (accompanied by bill, Senate, No. 25) of W. Paul White for legislation relative to certain mortgage transactions. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT RELATIVE TO CERTAIN MORTGAGE TRANSACTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 183 of the General Laws is hereby
2 amended by inserting after section 63A the following section: —

3 Section 63B. Any person, firm, partnership, corporation or trust
4 that makes any loan secured or to be secured by a mortgage of
5 real property located in part or wholly in the commonwealth,
6 whether such loan is used for purchase, refinancing existing
7 indebtedness or otherwise shall, at the time of execution of the
8 loan documents, pay the loan proceeds to the mortgagor or the
9 mortgagor's attorney, or the mortgagee's attorney by a certified,
10 bank treasurer's or cashier's check or by federal funds wire
11 transfer. If the loan transaction is subject to a right of rescission
12 under state or Federal law, the loan proceeds shall be payable in
13 such form at the time of termination of the right to rescind the
14 loan transaction, if later than when the loan documents are exe-
15 cuted.

1 SECTION 2. Chapter 184 of the General Laws is hereby
2 amended by inserting after section 17D the following section: —

3 Section 17E. (a) No person, firm, partnership, corporation or
4 trust shall give or accept any fee, kickback, or other thing of value
5 pursuant to any agreement or understanding, oral or otherwise,
6 that business incident to or a part of a settlement service involving
7 a federally-related mortgage loan as defined in 24 CFR 3500.2(a)
8 (3) on a one to four family, owner-occupied residence located in

9 the commonwealth shall be referred to any person, firm, partner-
10 ship, corporation or trust. A company may not pay any other com-
11 pany or the employees of any other company for the referral of
12 settlement service business.

13 (b) No person, firm, partnership, corporation or trust shall give
14 or accept any portion, split, or percentage of any charge made or
15 received for the rendering of a settlement service in connection
16 with a transaction involving a mortgage loan on a one to four
17 family, owner-occupied residence in the commonwealth other than
18 for services actually performed. A charge for which no or nominal
19 services are performed or for which duplicative fees are charged
20 shall be an unearned fee and in violation of this section. The
21 source of the payment shall not determine whether or not a service
22 is compensable, nor may the prohibitions of this section be
23 avoided by creating an arrangement wherein the purchaser of
24 services splits the fee.

25 When a person in a position to refer settlement service busi-
26 ness, including but not limited to an attorney, mortgage lender,
27 real estate broker or agent, or developer or builder, receives a pay-
28 ment for providing additional settlement services as part of a real
29 estate transaction, such payment must be for services that are
30 actual, necessary and distinct from the primary services provided
31 by such person. For a person to receive compensation as a title
32 agent, said person must perform "core title agent services" as
33 described in 24 CFR 3500.14(g) (3).

34 (c) "Thing of value" shall be as defined in 24 CFR 3500.14(d).
35 A thing of value shall not require a transfer of money. The fact
36 that the transfer of the thing of value does not result in an increase
37 in any charge made by the person giving the thing of value shall
38 not be relevant in determining whether the act is prohibited.

39 (d) An agreement or understanding for the referral of business
40 incident to or part of a settlement service need not be written or
41 verbalized but may be established by a practice, pattern or course
42 of conduct. When a thing of value is received repeatedly and is
43 connected in any way with the volume or value of the business
44 referred, the receipt of the thing of value shall be evidence that it
45 is made pursuant to an agreement or understanding for the referral
46 of business.

47 (e) A referral includes any oral or written action directed to a
48 person which has the effect of affirmatively influencing the selec-
49 tion by any person of a provider of a settlement service or busi-
50 ness incident to or part of a settlement service when such person
51 will pay for such settlement service or business incident thereto or
52 pay a charge attributable in whole or in part to such settlement
53 service or business.

54 A referral also occurs whenever a person paying for a settle-
55 ment service or business incident thereto is required to use a par-
56 ticular provider of a settlement service or business incident
57 thereto. Such referral shall not be a violation of this section, if the
58 conditions set forth in 24 CFR 3500.15(b) (2) are satisfied.

59 (f) This section shall not prohibit payment:

60 (i) To an attorney for services actually rendered; or

61 (ii) By a title insurance company to its duly authorized agent
62 for services actually performed in the issuance of a policy of title
63 insurance; or

64 (iii) By a lender, duly authorized agent or contractor for serv-
65 ices actually performed in the origination, processing, or funding
66 of a loan; or

67 (iv) To any person of a bonafide salary or compensation or
68 other payment for goods or facilities actually furnished or for
69 services actually performed; or.

70 (v) Pursuant to cooperative brokerage and referral arrange-
71 ments or agreements between real estate agents and brokers,
72 acting in such capacity but not as mortgage brokers or otherwise.

73 (g) A "settlement service" subject to this section shall be as
74 defined in 24 CFR 3500.2(a) (16).

