

1 AMENDMENT TO HOUSE BILL 3192

2 AMENDMENT NO. _____. Amend House Bill 3192 by replacing
3 the title with the following:

4 "AN ACT concerning mortgage lenders."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 1. Short title. This Act may be cited as the
8 Mortgage Lender's Closing Duties Act.

9 Section 5. Definitions. As used in this Act:

10 "Residential real estate", "lender", "borrower",
11 "mortgage loan", "residential mortgage loan", "loan broker",
12 "loan originator", "loan originating", "residential mortgage
13 loan commitment", and "escrow agent" are defined as in the
14 Residential Mortgage License Act of 1987.

15 "Loan package" refers to any and all documentation
16 tendered by a lender reasonably necessary to effectuate the
17 escrow closing, the execution of which by the borrower shall
18 permit the immediate disbursement of mortgage loan proceeds.

19 "Escrow closing" refers to the process of accepting
20 escrow funds and a loan package by an escrow agent on a
21 residential mortgage loan and the final disbursement of those

1 funds, along with the borrower's down payment, if any, and
2 the acceptance of documents from the seller of the
3 residential real property sufficient to transfer title (legal
4 or equitable) to the subject property to the borrower; and
5 the simultaneous transfer of the balance of such funds as may
6 be due to the seller, or as the seller and borrower may
7 direct, and the delivery of the documents from the seller to
8 the borrower, including, if applicable, the placing for
9 recording of the deed or other document intended to place the
10 borrower in title to the subject residential real property.

11 "Investor" refers to the entity that invests money in
12 residential mortgage loans, or ultimately provides funding
13 necessary to close a residential mortgage financing
14 transaction.

15 "Funding" and "good funds" refer to the monetary
16 consideration provided by a lender incident to and
17 simultaneous with the closing of a "residential mortgage
18 financing transaction", as that term is defined and used in
19 the Residential Mortgage License Act of 1987, and shall
20 consist of cash, a cashier's check or checks, a certified
21 check or checks, a money order or money orders, or the
22 electronic transfer to the escrow agent of such cash,
23 cashier's check or checks, certified check or checks, or
24 money order or orders, but shall not include a bank draft or
25 drafts or the electronic transfer to the escrow agent of a
26 bank draft or drafts, nor any other form of funding
27 containing conditions precedent to the negotiation of that
28 funding.

29 "Firm written commitment for financing" means a
30 non-contingent written agreement to lend to a borrower good
31 funds secured by a mortgage against a specific parcel of
32 residential real property and which shall, at a minimum,
33 state the amount of the loan, the rate of interest per annum,
34 the annual percentage rate, and any loan origination and loan

1 discount fees, and shall be subject to only the following
2 conditions:

3 (1) no material changes in the borrower's financial
4 condition;

5 (2) the lien of the mortgage being insured by a
6 licensed title insurance company as the first and
7 paramount lien against the residential real property;

8 (3) matters of survey;

9 (4) homeowner's insurance satisfactory to the
10 lender; and

11 (5) the mortgage being funded by a date certain.

12 Section 10. Provision of loan documents. No lender or
13 investor who has issued a firm written commitment for
14 mortgage loan financing, upon receiving reasonable notice
15 prior to the closing from the buyer, the seller, or the
16 escrow closing company of the date, time, and location of the
17 closing of the purchase and sale of 1-4 family,
18 owner-occupied residential real estate, shall fail to provide
19 to the escrow closer the mortgage loan documents or loan
20 package at the time, date, and place for the closing for
21 execution by the borrower and reasonably sought by that
22 lender as a precondition to the disbursement of mortgage loan
23 proceeds.

24 Section 15. Provision of loan funds. No lender or
25 investor who has issued a firm written commitment for
26 mortgage loan financing, upon receiving reasonable notice
27 from the buyer, the seller, or the escrow closing company of
28 the date, time, and location of the closing of the purchase
29 and sale of 1-4 family, owner-occupied residential real
30 estate, shall fail to provide to the escrow closer the
31 necessary funding for the mortgage loan in the form of "good
32 funds" at the time, date, and place for the closing for use

1 by the borrower incident to the purchase and sale
2 transaction. Incident to the funding of that mortgage loan,
3 any lender intending to utilize an electronic transfer of
4 funding shall first secure any necessary wire transfer
5 instructions from the escrow closer and shall advise the
6 borrower or the borrower's designee in writing of its
7 intention to transfer the funding for the transaction via
8 electronic means and shall institute that electronic transfer
9 in sufficient time so that the necessary funding will be
10 received by the escrow closer prior to the time and date of
11 the escrow closing.

12 Section 20. Fees to cover lender's fines prohibited. No
13 lender or investor who has issued a firm written commitment
14 for mortgage loan financing, upon receiving reasonable notice
15 from the buyer, the seller, or the escrow closing company of
16 the date, time, and location of the closing of the purchase
17 and sale of 1-4 family, owner-occupied residential real
18 estate, shall charge or attempt to charge to the borrower a
19 fee or anything of value to offset such costs as may be
20 incurred by it as a result of the violation by the lender of
21 any Section of this Act.

22 Section 25. Notice to investor. A notice of closing as
23 described in this Act that is provided to a loan originator
24 or loan broker shall be deemed to constitute notice to any
25 investor.

26 Section 30. Violations. A loan originator or loan broker
27 and an investor who violate this Act shall be jointly and
28 severally liable to the borrower for the greater of actual
29 damages incurred by the borrower on account of the violation
30 or violations or \$5,000 per occurrence, plus reasonable
31 attorney's fees."