

# SENATE BILL No. 698

January 29, 1992, Introduced by Senators DILLINGHAM and BOUCHARD and referred to the Committee on Corporations and Economic Development.

A bill to regulate the use of drafts by settlement agents, certain credit granting institutions, and certain other institutions in closing loans secured by residential real estate; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Commissioner" means the commissioner of the financial  
3 institutions bureau.

4       (b) "Draft" means a draft as described and defined in  
5 section 3104 of the uniform commercial code, Act No. 174 of the  
6 Public Acts of 1962, being section 440.3104 of the Michigan  
7 Compiled Laws.

8       (c) "Federally insured financial institution" means a state  
9 or national bank, state or federal credit union, state or federal

1 savings and loan association, or state or federal savings bank  
2 whose deposits are insured by a federal agency or instrumentality  
3 that is backed by the full faith and credit of the United  
4 States.

5 (d) "Lender" means a state or nationally chartered bank, a  
6 state or federally chartered savings and loan association, state  
7 or federally chartered credit union, state or federally chartered  
8 savings bank, mortgage broker, mortgage lender, mortgage servic-  
9 er, or an individual, corporation, partnership, or any other  
10 legal entity originating, making, or purchasing mortgage loans.

11 (e) "Licensing act" means the mortgage brokers, lenders, and  
12 servicers licensing act, Act No. 173 of the Public Acts of 1987,  
13 being sections 445.1651 to 445.1683 of the Michigan Compiled  
14 Laws.

15 (f) "Loan documents" means the following properly executed  
16 documents evidencing a mortgage loan:

17 (i) A promissory note.

18 (ii) An assignment of the promissory note.

19 (iii) A mortgage.

20 (iv) An assignment of the mortgage.

21 (g) "Mortgage loan" means a loan, the repayment of which is  
22 secured by a mortgage on real property located within this state  
23 and designed for occupancy by 4 or fewer families.

24 (h) "Settlement agent" means an individual, corporation,  
25 partnership, or other legal entity that acts in a fiduciary  
26 capacity by receiving, possessing, and disbursing funds and  
27 documents with respect to the closing of a mortgage loan.

1 (i) "Warehouse lender" means a federally insured financial  
2 institution that has extended to a lender a line of credit  
3 secured by 1 or more mortgage loans.

4 Sec. 3. (1) A settlement agent that closes a mortgage loan  
5 may disburse funds that it received from a lender in the form of  
6 a draft only if the draft has been paid or if all of the follow-  
7 ing conditions are met:

8 (a) The settlement agent deposits the draft in its trust  
9 account at a federally insured financial institution of its  
10 choice concurrently with the disbursements it makes in closing  
11 the mortgage loan.

12 (b) The settlement agent has in its possession loan docu-  
13 ments for the mortgage loan. The name of the assignee in the  
14 assignments of the promissory note and mortgage shall be left  
15 blank.

16 (c) The settlement agent has in its possession an agreement  
17 by the lender granting the settlement agent a security interest  
18 in the loan documents and mortgage loans for which it disburses  
19 funds as permitted in this section.

20 (d) If the settlement agent is to deliver the loan documents  
21 to a person other than the lender, the settlement agent has in  
22 its possession a signed statement from the person that the person  
23 shall hold the documents in trust for the benefit of the settle-  
24 ment agent to perfect the settlement agent's security interest in  
25 the loan documents until the draft is paid in full.

26 (e) If the settlement agent is to deliver the loan documents  
27 to the lender, the settlement agent has in its possession a

1 signed statement from the lender acknowledging that the lender is  
2 holding the loan documents for ultimate sale, exchange, presenta-  
3 tion, collection, renewal, or registration of transfer and that  
4 the settlement agent's security interest remains perfected as  
5 provided in section 9304 of the uniform commercial code, Act  
6 No. 174 of the Public Acts of 1962, being section 440.9304 of the  
7 Michigan Compiled Laws.

8       (2) The agreements and statements described in  
9 subsection (1)(c), (d), or (e) may be specific to the mortgage  
10 loan being closed or applicable to multiple loans being closed by  
11 the settlement agent.

12       Sec. 5. If a settlement agent closes a mortgage loan and  
13 disburses funds as permitted under section 3 before payment of  
14 the draft, the settlement agent has a perfected security interest  
15 in the mortgage loan and loan documents.

16       Sec. 7. Promptly upon disbursement of funds as permitted by  
17 section 3, the settlement agent shall transmit the loan documents  
18 to the person designated by the lender. A person designated by  
19 the lender who receives the loan documents shall hold them in  
20 trust for the benefit of the settlement agent so as to perfect  
21 the settlement agent's security interest in the loan documents  
22 until the draft has been paid in full.

23       Sec. 9. If the settlement agent closes a mortgage loan and  
24 disburses funds as permitted under section 3 and the draft is  
25 paid by the later of midnight of the third business day after the  
26 mortgage loan was closed or midnight of the second business day  
27 after the loan documents have been delivered by the settlement

1 agent to the person designated by the lender, the settlement  
2 agent shall not have any rights in the mortgage loan or loan doc-  
3 uments after the draft has been paid.

4       Sec. 11. (1) If the settlement agent closes a mortgage loan  
5 and disburses funds as permitted under section 3 and the draft is  
6 not paid by the later of midnight of the third business day after  
7 the mortgage loan was closed or midnight of the second business  
8 day after the loan documents have been delivered by the settle-  
9 ment agent to the person designated by the lender, the settlement  
10 agent shall give the lender written notice that the draft has not  
11 been paid. If the draft is not paid within 3 days after the  
12 lender has received the written notice that the draft has not  
13 been paid, the person holding the loan documents shall immedi-  
14 ately return the loan documents to the settlement agent. The  
15 settlement agent has all the rights of a secured party under  
16 article 9 of the uniform commercial code, Act No. 174 of the  
17 Public Acts of 1962, being sections 440.9101 to 440.9994 of the  
18 Michigan Compiled Laws, including, but not limited to, the rights  
19 to enforce, record, and retain for its own account any of the  
20 loan documents.

21       (2) The lender, within 3 business days after a request,  
22 shall forward to the settlement agent all prepaid fees, interest,  
23 adjustments, and all original documents in the possession of the  
24 lender related to the mortgage loan, including, but not limited  
25 to, the loan application, survey, inspection reports, truth in  
26 lending statements, and appraisals.

1       Sec. 13. This act does not do either of the following:

2       (a) Relieve a lender of its obligation to pay a draft that  
3 it has made upon a settlement agent closing the mortgage loan.

4       (b) Preclude a settlement agent from bringing a civil action  
5 in a court of competent jurisdiction against a lender that has  
6 failed to pay its draft upon a settlement agent closing the mort-  
7 gage loan.

8       Sec. 15. (1) A lender may bring a civil action against a  
9 settlement agent for damages incurred by the lender as a result  
10 of the settlement agent's failure to close the mortgage loan in  
11 accordance with the lender's lawful written instructions and the  
12 reasonable and customary practices in the industry.

13       (2) Without limiting the amount of damages a lender may  
14 recover in a civil action, a lender may recover a minimum of  
15 \$500.00 for each mortgage loan not closed in accordance with  
16 written instructions or the reasonable and customary practices of  
17 the industry upon the happening of all of the following  
18 conditions:

19       (a) The violation of instructions by the settlement agent  
20 that resulted in a defect in or omission from the loan documents  
21 sufficient to cause a material decrease in the value of the  
22 loan.

23       (b) Not more than 6 months after the date the mortgage loan  
24 is closed, the lender's giving of notice to the settlement agent  
25 of the specific instructions or practices not followed by the  
26 settlement agent and the allowance of an opportunity to cure the  
27 defect within 30 days after the notice. If the defect is cured

1 by the settlement agent within the 30-day period, the lender may  
2 only recover actual damages.

3 (c) The commencement of the action within 2 years after the  
4 date the mortgage loan is closed.

5 Sec. 17. (1) Upon receipt of a written complaint or upon  
6 his or her own initiative, the commissioner shall investigate an  
7 alleged violation of this act by a settlement agent or a lender.

8 (2) The commissioner shall conduct an investigation within  
9 15 days after the receipt of a complaint in the case where the  
10 investigation is initiated by a written complaint. The commis-  
11 sioner shall report on the progress of the investigation to the  
12 affected parties within 30 days after initiation of the investi-  
13 gation, shall complete the investigation within 60 days after  
14 receipt of the complaint in cases where the investigation was  
15 initiated by a complaint, and shall report the findings to the  
16 affected parties.

17 Sec. 19. (1) If, after giving notice and an opportunity for  
18 a hearing pursuant to the administrative procedures act of 1969,  
19 Act No. 306 of the Public Acts of 1969, being sections 24.201 to  
20 24.328 of the Michigan Compiled Laws, the commissioner finds that  
21 a settlement agent or lender has violated this act, the commis-  
22 sioner may assess a civil fine of not more than \$2,000.00 for  
23 each violation, plus the actual costs of the investigation.

24 (2) Each draft accepted into the settlement agent's trust  
25 account and disbursed in violation of this act constitutes a sep-  
26 arate violation. Each draft improperly dishonored by a lender,  
27 pursuant to which a settlement agent has disbursed mortgage loan

1 proceeds in accordance with section 3, constitutes a separate  
2 violation.

3       (3) In determining a civil fine, the commissioner shall con-  
4 sider the extent to which the violation was knowing and willful,  
5 the corrective action taken by the settlement agent to ensure  
6 that the violation will not be repeated, and the record of the  
7 settlement agent in complying with this act.

8       Sec. 21. A settlement agent disbursing funds in compliance  
9 with this act is not liable for any loss suffered by any party  
10 arising as the result of a draft being dishonored or because of  
11 the insolvency or receivership of any bank, savings and loan  
12 association, savings bank, or credit union.

13       Sec. 23. The commissioner shall maintain accurate records  
14 of any complaints received, investigations made, administrative  
15 fines assessed, and other information the commissioner considers  
16 necessary to the enforcement of this act.

17       Sec. 25. The commissioner, in his or her annual report to  
18 the governor and the legislature, shall report on the enforcement  
19 of this act.