58.161 MORTGAGE BROKER DUTIES OF AGENCY.

Subdivision 1. **Generally.** A mortgage broker shall be considered to have created an agency relationship with the borrower in all cases and shall comply with the following duties:

(1) mortgage brokers shall act in the borrower's best interest and in the utmost good faith toward borrowers, and shall not compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker. A mortgage broker shall not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, either through direct or indirect means, that inures to the benefit of the mortgage broker on an expenditure made for the borrower;

(2) mortgage brokers will carry out all lawful instructions given by borrowers;

(3) mortgage brokers will disclose to borrowers all material facts of which the mortgage broker has knowledge which might reasonably affect the borrower's rights, interests, and/or ability to receive the borrower's intended benefit from the residential mortgage loan, but not facts which are reasonably susceptible to the knowledge of the borrower;

(4) mortgage brokers will use reasonable care in performing duties; and

(5) mortgage brokers will account to a borrower for all the borrower's money and property received as agent.

Subd. 2. **Scope.** (a) The duty of agency between mortgage broker and borrower applies when the mortgage broker is acting in the capacity of mortgage broker as described in section 58.02, subdivision 14 or 23.

(b) Nothing in this section prohibits a mortgage broker from contracting for or collecting a fee for services rendered and which had been disclosed to the borrower in advance of the provision of such services.

(c) Nothing in this section requires a mortgage broker to obtain a loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business, or to obtain a loan for the borrower from a mortgage lender with whom the mortgage broker does not have a business relationship.

History: *2007 c 18 s 6*