

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3180/P1dn
ARG:bjk:jf

August 17, 2009

ATTN: Rachel Rodriguez

Please review the attached draft carefully to ensure that it is consistent with your intent.

My understanding of the drafting request is that you want to impose a fiduciary duty on mortgage brokers similar to that which financial institutions owe their clients. The statutes contain no explicit fiduciary duty by banks toward clients. I have not used the term "fiduciary duty" in this draft because the meaning of the term is unclear. Nowhere in the statutes is the term defined. I also consulted *Black's Law Dictionary*, which offers no clear definition of the term. In the attached draft, I have required of mortgage brokers a duty of good faith and provided a few clear examples of what this duty entails. Please advise if this is not consistent with your intent.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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