

AMENDMENT TO H.R. 1728
OFFERED BY MR. ELLISON OF MINNESOTA

Page 18, after line 9, insert the following:

1 SEC. 106. FIDUCIARY DUTIES OF MORTGAGE BROKERS.

2 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
3 is amended by inserting after section 129E (as added by
4 section 602) the following new section:

5 “SEC. 129F. FIDUCIARY DUTIES OF MORTGAGE BROKERS.

6 “(a) DUTIES.—

7 “(1) IN GENERAL.—Any mortgage broker act-
8 ing to obtain or arrange for any consumer credit
9 transaction secured by the consumer’s principal
10 dwelling shall owe a duty to the borrower to comply
11 with the following duties:

12 “(A) Mortgage brokers shall act in the
13 consumer’s best interest and in the utmost good
14 faith toward each consumer and shall not com-
15 promise a consumer’s right or interest in favor
16 of another’s right or interest, including a right
17 or interest of the mortgage broker.

18 “(B) A mortgage broker shall not accept,
19 give, or charge any undisclosed compensation or
20 realize any undisclosed remuneration, either

1 through direct or indirect means, that inures to
2 the benefit of the mortgage broker on an ex-
3 penditure made for the consumer.

4 “(C) Mortgage brokers shall carry out all
5 lawful instructions given by the consumer.

6 “(D) Mortgage brokers shall disclose to
7 consumers all material facts of which the mort-
8 gage broker has knowledge which might reason-
9 ably affect the consumer’s rights, interests, or
10 ability to receive the consumer’s intended ben-
11 efit from the consumer credit transaction, but
12 not facts which are reasonably susceptible to
13 the knowledge of the consumer.

14 “(E) Mortgage brokers shall use reason-
15 able care in performing duties.

16 “(F) Mortgage brokers shall account to a
17 consumer for all the consumer’s money and
18 property received as agent.

19 “(2) SCOPE.—The duties of the mortgage
20 broker to the consumer apply when the mortgage
21 broker is acting in the capacity of mortgage broker
22 providing mortgage brokerage services with respect
23 to any consumer credit transaction secured by the
24 consumer’s principal dwelling for which the broker is
25 not the creditor.

1 “(3) RULES OF CONSTRUCTION.—

2 “(A) FEES FOR SERVICES RENDERED.—

3 No provision of this subsection shall be con-
4 strued as prohibiting a mortgage broker from
5 contracting for or collecting a fee for services
6 actually rendered to the extent the fee has been
7 disclosed to the consumer in advance of the pro-
8 vision of such services.

9 “(B) DUTY OF BROKER.—Except as re-
10 quired by this title, no provision of this sub-
11 section shall be construed as requiring a mort-
12 gage broker—

13 “(i) to obtain or arrange for any con-
14 sumer credit transaction secured by the
15 consumer’s principal dwelling on behalf of
16 a consumer that contains terms or condi-
17 tions not available to the mortgage broker
18 in the mortgage broker’s usual course of
19 business; or

20 “(ii) to obtain or arrange for any con-
21 sumer credit transaction secured by the
22 consumer’s principal dwelling from a cred-
23 itor with whom the mortgage broker does
24 not have a business relationship.

1 “(b) MORTGAGE BROKER DEFINED.—For purposes
2 of this section, the term ‘mortgage broker’ means any per-
3 son who is defined as a mortgage broker under applicable
4 State law.”.

