

Agenda

2009-2010 Mortgage Loan Originator Rulemaking Task Force

November 12, 2009
9:00 –11:00 a.m.
DRE 9th floor conference room
Colorado Division of Real Estate
1560 Broadway, Suite 925
Denver CO 80202
303.894.2166

Task Force Members: Alicia Arguello, Bart Bartholomew, Doug Braden, Carolyn H. Carnie, Brad Groves , Terry Jones, Bruce Jordan, Paul Orrell, Steve Peyton, Rod Shuster, Tammy Trucker, Wade Warthen, Libby Wittman and Jan Zavislan.

Agenda topics

9:00 – 10:00 a.m.	Mortgage Company Regulation in Colorado	Cary Whitaker
10:00 - 10:15 a.m.	Break	N/A
10:15 – 10:30 a.m.	Mortgage Company Regulation in Colorado	Cary Whitaker
10:30 – 10:50 a.m.	When is an application an application?	Cary Whitaker
10:50 – 11:00 a.m.	Public Commentary	Cary Whitaker

Minutes

2009-2010 Mortgage Loan Originator Rulemaking Task Force

November 12, 2009
9:00 – 11:00 a.m.
DRE 9th floor conference room
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1560 Broadway, Suite 925
Denver CO 80202
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Task Force Members Present: Terry Jones, Douglas L. Braden, Steve Peyton, Bart Bartholomew, Bruce M. Jordan, Tammy Trucker, Brad Groves, Paul Orrell, Wade Warthen and Rod Shuster.

Discussion:

1. Should there be any standards or requirements to receive a mortgage company registration?
 - a. If so, what are the standards?
 - i. Should standards include:
 1. Legal presence to operate in Colorado through the Secretary of State;
 2. The company has not been enjoined within the last five years to operate in Colorado; or
 3. The company has not violated any provision of the Colorado Consumer Protection Act, article 1 of title 6, C.R.S.
2. If the Director of the Division of Real Estate is able to approve a registration application, should the Director be able to deny, revoke or refuse to renew a registration?
 - a. If so, what grounds should the Director be able to deny, revoke or refuse to renew a registration?
 - i. Should grounds include:
 1. Engaging in any unfair or deceptive practice;
 2. Advertising rates, points, or other financing terms unless the terms are actually available;
 3. Engaging in bait and switch tactics;
 4. Duty to pay third party service providers;
 5. Reasonable supervision standards regarding their loan originators, including, but not limited to not hiring or compensating unlicensed individuals;
 6. Violating RESPA, Gramm Leach Bliley, the Truth in Lending Act, and other applicable federal laws;
 7. Document security and retention standards; or
 8. Duty to provide requested documents to the Division of Real Estate for investigations.
3. If the Director has regulatory oversight regarding mortgage companies, should the Director have any disciplinary tools to enforce any possible standards of conduct?

a. If so, what disciplinary tools are practical and realistic?

i. Should such tools include:

1. Imposition of fines;
2. Cease and Desist Orders;
3. Ability to seek injunctions;
4. Ability to assess restitution or actual damages; or
5. Place registration on a probationary status.

Results:

The Discussion began by providing an overview of the FHFA's expectations and defining pre-requisites for receiving a company registration.

1. Cary Whitaker began the meeting by providing some updates from the Federal Housing and Finance Agency (the "FHFA"). Basically, he explained that companies will be provided a unique identifier upon application, but that the FHFA is requiring all such unique identifiers to be validated by each state in which they are operating. Additionally, he explained that unique identifiers which are not validated will be regularly purged. As a result, this information ran counter to some suggestions in the previous meeting whereby it was suggested to allow companies to simply apply and receive a unique identifier or to allow companies that have validated unique identifiers from other states to essentially be exempt from any oversight from the Director of the Division of Real Estate.
2. Terry Jones confirmed the above statements through research that he had done by contacting Bill Mathews at the CSBS.
3. Brad Groves asked about the voluntary registration process that some states are implementing to allow exempt companies to become registered.
4. Cary Whitaker explained that essentially, they are allowing companies that want to get registered to voluntarily give up their existing exemption. That by volunteering to become registered, they have volunteered to be regulated by the appropriate state agency.
5. Bart Bartholomew asked about states which have mortgage regulation under a Division of Real Estate vs. a Division of Banking
6. Cary Whitaker explained that Colorado is one of 13 states that have placed mortgage regulation under a Division of Real Estate and not under banking.
7. Brad Groves asked how many states have companies licensed under a separate agency as in Colorado under the UCCC.
8. Cary Whitaker explained that in most states, all mortgage or lending regulation is under one roof. He then began the discussion regarding pre-requisites for company registration. He proposed being registered with the Colorado Secretary of State and disqualifying companies that had been enjoined from operating in Colorado.

9. Wade Warthen suggested that companies should be disqualified if they had been enjoined by Colorado from operating as other states may have standards which are not applicable to Colorado law. He asked if a company is enjoined in Utah in regards to an advertising issue and such law or standard is not relevant to Colorado, why should they be disqualified from receiving a registration?
10. Cary Whitaker suggested that companies should be disqualified from being registered if they were enjoined for deceptive or abusive practices.
11. Terry Jones asked what was the difference between being enjoined and being convicted.
12. Wade Warthen explained that injunctions may prohibit a company or individual from operating or they may be more specific in regards to conduct. He emphasized that he thought it was inappropriate for a company to be barred from Colorado due to being enjoined in another state. Mr. Warthen stated that a broad disqualification for injunctions may lead to unintended consequences.
13. Rod Shuster stated that companies that have been enjoined could simply change their company name to avoid being sanctioned or denied.
14. Cary Whitaker stated that, yes that is a possibility, but that a majority of the companies have put time, energy and resources into branding their company's name and building a referral business based on past clientele.
15. Steve Peyton asked if there was anyway to make an individual accountable and responsible for the actions of the company?
16. Cary Whitaker stated that he thought that it really becomes a game of Three Card Monty, so to speak, when selecting a responsible individual. Furthermore, those companies would simply find someone without a criminal record or an individual who meets all of the requirements.
17. Bruce Jordan explained that he believed a company regulatory regime was essentially being forced on the industry without clear identification of an existing problem. He thought that it was overreaching to carve out a regulatory program when all that is needed is a unique identifier. He thought the approach was excessive.
18. Cary Whitaker explained that the agencies concern was that by approving a registration application, the state was essentially providing the company a stamp of approval.
19. Steve Peyton highlighted the fact that we have a pretty robust set of standards for individual originators and that we should review existing standards to see if they should be applied to companies.
20. The task force was unable to reach a consensus. As a result, Cary Whitaker moved the task force to vote on three different options. The vote was regarding what pre-requisites should exist for company registration. The three options were as follows:
 - a. **Option 1:**
 - i. The company is compliant with the Colorado Secretary of State and has not been enjoined from operating; or
 - ii. Holds a Colorado Supervised Lenders License.
 1. The following individuals voted for this option:
 - a. Paul Orrell;
 - b. Tammy Trucker;
 - c. Rod Shuster; and
 - d. Steve Peyton.
 - b. **Option 2:**
 - i. The company is compliant with the Colorado Secretary of State; or
 - ii. Holds a Colorado Supervised Lenders License.
 1. The following individuals voted for this option:
 - a. Bruce Jordan;

- b. Wade Warthen;
- c. Bart Bartholomew;
- d. Douglas L. Braden; and
- e. Terry Jones.

c. Option 3:

- i. No standards associated with receiving a company registration.
 - 1. The following individual voted for this option:
 - a. Brad Groves

Action Items: None

Person Responsible: N/A

Timeline: N/A

10:00 - 10:15 a.m.	Break	

10:15 – 10:30 a.m.	Mortgage Company Regulation in Colorado	Cary Whitaker
<p>Discussion:</p> <ol style="list-style-type: none"> 1. Discussion regarding regulation of mortgage companies in Colorado to be continued from previous agenda item. 		
<p>Results:</p> <p>After the vote, the task force began to discuss post registration issuance standards of conduct and prohibitions for mortgage companies.</p> <ol style="list-style-type: none"> 1. Brad Groves explained that he voted for no standards because he felt it would be misleading to consumers to require minimum standard. He further stated that to label it a license, there would need to be a whole list of requirements. 2. Terry Jones stated that there is already protection for consumers in existing laws that provide robust regulation of the individual loan originators. 3. Cary Whitaker explained that what he was interpreting from the group was that they wanted to see minimum requirements for entry, but wanted more robust standards of conduct and prohibited activities. 4. Brad Groves suggested compliance with all state and federal laws as a good standard. 5. Doug Braden stated that we should address document retention from a company perspective rather than the individual. 6. Cary Whitaker stated that in order to comply with all state and federal laws, the companies would have to comply with RESPA, the Truth in Lending Act, Graham Leach Bliley and would not be allowed to engage in deceptive business practices pursuant to the Colorado Consumer Protection Act. 7. Wade Warthen asked if a company should loose their registration if they go bankrupt? Mr. Warthen was concerned that borrowers could loose substantial sums of money if such monies are given to a company that is bankrupt. The consumers return would be pennies on the dollar. 8. Rod Shuster asked if a lot of companies collect monies up front. 9. Cary Whitaker clarified that this is a primary tactic of loan modification companies, but has seen it take place in the traditional mortgage lending industry. He also stated that there may be some benefits to company oversight. Such benefits include document retention, company errors and omissions policies and company surety bonds. He asked if companies should be allowed to hire unlicensed originators? He stated that currently, there is no accountability for the company, only the individuals. He further explained that in the last month, the Division discovered a company that had originated around 500 loans without one licensed individual. 10. Brad Groves raised the topic of company supervision. When should companies be held accountable for rogue originators? 11. Cary Whitaker explained that there are currently requirements for reasonable supervision. Reasonable supervision generally encompasses broad or more company wide issues and doesn't necessarily take into account a rogue originator. <p>Meeting was adjourned.</p>		
Action Items: N/A		
Person Responsible: N/A		

Timeline: N/A		
10:30 – 10:50 a.m.	When is an application an application?	Cary Whitaker
Discussion:		
<p>1. Current RESPA definition of an application is as follows:</p> <p>a. Under the final rule, HUD has also adopted a single application process. An application, in order to trigger the GFE requirement, must have at least the following six pieces of information: 1) the borrower’s name; 2) the borrower’s Social Security Number (for obtaining a credit report); 3) the borrower’s gross monthly income; 4) the property address; 5) an estimate of the value of the property; and 6) the amount of the mortgage loan sought. Under this single application process, the loan originator is prohibited from requiring supplemental documentation to verify the information provided by the borrower as a condition for providing a GFE. The loan originator can, however, require the borrower to provide such verification information after the GFE has been provided in order to complete final underwriting. The information collected by the loan originator as part of the application cannot later become the basis for a “changed circumstance” under which a loan originator may issue a new GFE unless the loan originator can demonstrate that there was a change in the particular information or that it was inaccurate, or that the loan originator did not rely on that particular information in issuing the GFE. A “changed circumstance” can include Acts of God, war, disaster, information provided particular to the borrower or transaction that is inaccurate (including amount of the loan or estimated value of the property). According to HUD, this approach provides the flexibility that loan originators need to properly underwrite loans while limiting the “bait-and-switch” methods sometimes used by loan originators. Loan originators will no longer be able to draw in borrowers with a GFE and then after significant application fees have been paid, or burdensome documentation demands have been made, claim that a material change has resulted in a more expensive loan offering.</p> <p>2. Is this definition adequate?</p> <p>3. What, if any, improvements exist?</p>		
Results: None. The discussion for company regulation accounted for the entire meeting.		
Action Items: None		
Person Responsible: N/A		
Timeline: N/A		

10:50 - 11:00 a.m.	Public Commentary - Public to limit comments to five (5) minutes.	Cary Whitaker
Public Attendees:		
1. Glenn Dooley w/ Mac5 Mortgage		
Public Comments:		
1. Mr. Dooley thanked the task force for clarification provided in the meeting regarding FHFA’s expectations for unique identifiers. Additionally, he stated that companies should absolutely be prohibited from hiring unlicensed originators. Furthermore that such a provision would be a step in the right direction.		