



NEWS RELEASE

For Immediate Release - October 23, 2009

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District Court Upholds DORA'S Right to Subpoena Loan Originators' Bank Records During Investigation

DENVER - In a victory for consumers, on Wednesday Colorado District Court Judge John Madden, IV upheld the Division of Real Estate's authority to subpoena bank records during the course of a mortgage loan originator investigation. Judge Madden agreed with DORA's Division of Real Estate's argument that during the course of an investigation into mortgage fraud and unlicensed residential loan activity, a loan officer's bank records are critical evidence. The court found that "bank records of the mortgage loan originator and his company would reveal if any such funds were...distributed to unlicensed individuals in amounts indicating that such individual was being paid for originating the loan. It is possible...that methods could be utilized to mask such transactions, such as arranging for side payments by a borrower, making multiple payments to the individual in smaller amounts, or making payments to intermediaries."

The decision was a result of a lawsuit filed against the Division of Real Estate by Plaintiffs Acclaim Mortgage and Daniel Gordon contesting the Division's ability to obtain personal bank records. The lawsuit followed the Division's commencement of an investigation of Gordon's residential lending activities. On August 5, 2009, the Division sent Mr. Gordon a request for information. The Division also subpoenaed Wells Fargo. The request for information sought bank statements, copies of checks, and evidence of deposits for all accounts used by Mr. Gordon for employee compensation and business expenses from January 01, 2009, through July 31, 2009. The Wells Fargo subpoena sought verification of everyone who had use or authority over bank statements for, evidence of deposits into, and checks written on all accounts at Wells Fargo Bank in the name of Plaintiff Acclaim Mortgage, Inc. or Mr. Gordon from January 1, 2008, through July 1, 2009. The Plaintiffs asserted that the requested information violated the Plaintiffs' constitutional right to privacy.

"The court's decision to uphold the Division of Real Estate's ability to subpoena bank records where the information is relevant and sufficiently specific to assist the investigation acknowledges the devastation unscrupulous loan originators have wreaked upon consumers in the form of foreclosures and loan origination scams," said Director of the Division of Real Estate Erin Toll. "With passage of stringent new licensing requirements, unlicensed activity is becoming increasingly prevalent. The court's decision is a giant step toward combating mortgage fraud and protecting consumers," she said.

The opinion also has significant impact on other state agencies that use bank subpoenas in their investigations. Other DORA divisions, such as the Division of Insurance and the Division of Civil Rights, need to follow the money to determine violations. "We are happy that the Court struck a balance between an individual's right to privacy with the need to protect unsuspecting consumers from the increasing amount of scams and fraud we are seeing throughout the Department during these difficult economic times," said Rico Munn, Executive Director of the Department of Regulatory Agencies.

DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive businesses environment. Consumer protection is our mission.

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