

Agenda

2009-2010 Mortgage Loan Originator Rulemaking Task Force

February 10, 2010
9:00 – 11:00 a.m.
12th Floor Conference Room – Ste. 1250C
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 – 9:15 a.m.	House Bill 10-1141. The Mortgage Company Regulation Bill.	Cary Whitaker
9:15 – 10:00 a.m.	Loan modification contract	Cary Whitaker
10:00 -10:15 a.m.	Break	N/A
10:15 – 10:50 a.m.	Telemarketers and Lead Generators	Cary Whitaker
10:50 – 11:00 a.m.	Public Commentary	Cary Whitaker

Minutes

2009-2010 Mortgage Loan Originator Rulemaking Task Force

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9:00 – 11:00 a.m.
12th Floor Conference Room – Ste. 1250C
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1560 Broadway, Suite 925
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Task Force Members Present: Carolyn Carnie, Terry Jones, Brad Groves, Jan Zavislan, Wade Warthen, Bruce Jordan, Bart Bartholomew, Paul Orrell, Tammy Trucker, Steve Peyton and Rod Shuster.

9:00 – 9:15 a.m.	House Bill 10-1141. The Mortgage Company Regulation Bill.	Cary Whitaker
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Discussion:

1. Division of Real Estate to pass out this proposed law. It may also be reviewed on the Colorado General Assembly website at:
http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/91997519A6EFDCBB872576A80054E840?Open&file=1141_01.pdf.
2. Discuss how this proposed bill affects topics on the horizon, including:
 - a. Telemarketers and lead generators;
 - b. W-2 loan processors and underwriters;
 - c. Document retention;
 - d. Defining an operating subsidiary;
 - e. How to advertise when working for multiple companies; and
 - f. Use of legal names and signatures.
3. Since this proposed bill addresses document retention and changes the exemptions for operating subsidiaries to a subsidiary that is owned and controlled by a bank or savings association, should these discussions be tabled?

Results:

1. Cary Whitaker began by reviewing House Bill 10-1141. He explained the pre-requisites for becoming registered pursuant to this bill which only require that the mortgage company is in good standing with the Colorado Secretary of State and has not been legally barred from operating in Colorado.
 - a. Additionally, he explained the exemption updates in House Bill 10-1141. Specifically, that these changes were a result of guidance provided by HUD in regards to Colorado's compliance with the S.A.F.E. Act.
 - b. Finally, he outlined the three standards of conduct included in the bill which address:
 - i. Document retention for companies;
 - ii. A prohibition for companies to hire unlicensed individuals; and
 - iii. Company advertising.
2. He further explained the four possible issues raised by HUD regarding Colorado's compliance with the S.A.F.E. Act. They include:
 - a. Security dealer language in section 12-61-902(6)(b)(v), C.R.S.;
 - b. Colorado's statute appears to be void of any mechanism allowing the challenging of information contained in the NMLS;
 - c. Exemptions; and
 - d. Temporary licensure.
3. Terry Jones asked if the Division was going to offer amendments to HB10-1141 regarding HUD's correspondence.
4. Cary Whitaker stated that updated exemptions were outlined in HB10-1141 and that he believed all other issues could be resolved by regulation.

5. Brad Groves asked if HB10-1141 required all mortgage companies to be approved by the Division of Real Estate, including those which already have a unique identifier.
6. Cary Whitaker stated the intent was to have all companies registered by the Division of Real Estate and that this mirrored the FHFA's expectations. Additionally, that if we need to clarify further, we can do so by rule or position statement.
7. Wade Warthen stated that he thought out of state companies may be surprised to learn they need to be registered and approved by Colorado through the NMLS.

Action Items: None

Person Responsible: N/A

Timeline: N/A

9:15 – 10:00 a.m.

Loan modification contract review

Cary Whitaker

Discussion:

1. Task force to review and comment on sample contracts provided by e-mail.
2. Which forms does the task force like?
3. What features are missing?
4. Is a cancellation notice necessary?
5. Should there be documentation regarding monies collected?

Results:

1. Cary Whitaker began by seeking input on a few sample loan modification contracts from California, Washington and from a local loan modification company.
2. Paul Orrell stated that he thought the private contract was too lengthy and seemed overwhelming.
3. Tammy Trucker highlighted the Washington contract as an example to use for the loan modification contract we are developing.
4. Jan Zavislan asked about advanced fees and if they were going to be allowed. He stated that the Foreclosure Protection Act prohibits advance fees of any kind. Additionally, he stated that persons who originate loans through the course of a business are exempt from the Foreclosure Protection Act. Jan Zavislan asked how the public would discern who can and who cannot collect up front fees.
5. Cary Whitaker asked the task force about their opinion regarding upfront fees.
6. Bruce Jordan stated that if you take away the ability to collect upfront fees, you may actually take away a valuable service. Furthermore, this may put people in the position of working for 6-8 weeks without any compensation. Ultimately, most people will say this is a business model that doesn't work.
7. Terry Jones suggested that loan modifiers may be compensated by the hour, similar to how attorneys bill their clients. He stated that this is being proposed federally in regards to loan originator compensation. Additionally, Mr. Jones stated that it is his understanding that if the loan doesn't come to fruition, the originator may only keep \$300.00.
8. Wade Warthen commented that the current law would need updates in order to accommodate hourly charges. Additionally, there will be situations where a modification company puts in a lot of hours and can't get the modification.
9. Paul Orrell raised the issue of loan modifications negatively affecting a borrowers' credit and asked the task force if they had any knowledge of this.
10. Tammy Trucker stated that the primary issue affecting credit is late payments. Additionally, the

presence of a loan modification essentially means delinquency. Furthermore, the point of credit reporting is to assess risk. Negative credit results are consequences of a modification.

11. Wade Warthen also raised possible tax consequences from loan modifications and that this should be included in any contract.
12. Tammy Trucker asked about implementing a compensation cap on loan modification fees.
13. Cary Whitaker stated that he didn't think it was possible with the current law.
14. Rod Shuster stated that he thought we may want to include consumer information on where to shop for different professionals which can answer tax or credit questions. He stated that consumers really need to shop around.
15. Jan Zavislan stated that there is an exemption in the Foreclosure Protection Act that says a foreclosure consultant is not a person originating or closing a loan in the persons' normal course of business, if the loan is subject to RESPA or it is a second mortgage or HELOC. He further stated that this law, in his opinion, does not exempt Colorado licensed loan originators. Therefore, there may be a conflict in these two laws. He stated that while the Mortgage Loan Originator Licensing Act doesn't prohibit upfront fees, we shouldn't develop a contract which conflicts the Foreclosure Protection Act.
16. Wade Warthen and Brad Groves concurred with Jan Zavislan.
17. Wade Warthen suggested an approach whereby the monies from the consumer would be held in an escrow account that the loan modifier does not have access to. Upon completion of the loan modification, the consumer would forward the monies at that point.
18. Jan Zavislan state that his instincts lead him to believe the consumer would still be out the \$2,500.00 and that there can't be such a loophole which allows them to collect huge upfront fees.
19. Wade Warthen stated this would create a scenario where the company will never be paid and will essentially result in the prohibition of this service in Colorado.
20. The task force took a 10 minute break.
21. After the meeting, the task force voted on the three sample forms, which included a form used by California, Washington and a local Colorado company called Homeownership for Life. The goal was to choose a form to begin with and to ensure it complies with all Colorado law. The results were as follows:
 - a. California's form:
 - i. No one voted for this form.
 - b. Washington's form. The following individuals voted for this form:
 - i. Rod Shuster;
 - ii. Steve Peyton;
 - iii. Paul Orrell;
 - iv. Tammy Trucker; and
 - v. Carolyn Carnie.
 - c. Homeownership For Life, LLC Contract. The following individuals voted for this form:
 - i. Wade Warthen;
 - ii. Terry Jones;
 - iii. Jan Zavislan;
 - iv. Brad Groves; and
 - v. Bart Bartholomew.
22. Cary Whitaker explained that since there was a tie between the two contracts, he will select a contract foundation and work from there. A proposed contract would be provided by the next meeting in order to finalize.

Action Items: Develop a loan modification contract.
Person Responsible: Cary Whitaker
Timeline: By March 17, 2010

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

10:15 – 10:50 a.m.	Telemarketers and Lead Generators	Cary Whitaker
<p>Discussion:</p> <ol style="list-style-type: none"> 1. In the first couple years of the program, when ever the Division of Real Estate discovered an unlicensed individual, the excuse we commonly heard was that they were a loan processor. In the past year or so, the trend has changed to that of telemarketers or lead generators. 2. Should telemarketers be able to discuss, with a consumer, their current mortgage situation? 3. Should telemarketers/lead generators be discussing interest rates? 4. What is acceptable for a telemarketer to discuss? 		
<p>Results:</p> <ol style="list-style-type: none"> 1. Cary Whitaker began by providing some background. Essentially, he explained that individuals, who are most likely unlicensed, are often claiming to be telemarketers or lead generators. Additionally, that many lead generators appear to walking a thin line regarding licensure. As a result, he asked the group what conduct should be allowed, what should they be prohibited from and do we need to adopt a rule to provide clarification to the industry? 2. Brad Groves stated that obviously taking an application is crossing the line. He asked what other behavior is the Division seeing? 3. Cary Whitaker said that telemarketers were asking about a consumer’s financial information, including their income, assets, etc... Additionally, they often talk and in some instances promise interest rates. 4. Paul Orrell asked if there was anything wrong with asking a consumer about their financial circumstances, especially if they are willing to provide this information voluntarily. 5. Brad Groves stated that they shouldn’t be taking applications or talk about terms available to the borrower, but that doesn’t mean they should be prohibited from discussing, in general, programs that are available. He stated that there should be no issue with someone inquiring to see if they should be forwarded to an originator. If they sit down with someone and take an application or quote a rate that is crossing the line. 6. Paul Orrell stated that they should be able to inquire about borrowers’ circumstances. Without this, we would take away a valuable service. 7. Cary Whitaker stated that the goal is not to remove a valuable service, but to make sure they are not crossing the line. The Division is hearing from telemarketers that they are unsure about where the line is. 8. Steve Peyton stated that the laws are already in place. If they take an application or offer a rate, they better be licensed. 9. In general, the task force thought that existing laws were already in place. Additionally, that proposed HUD definitions of an application, taking an application and negotiating loan terms would provide ample clarity. In summary, the task force agreed that a rule was unnecessary. 		
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
<p>Public Attendees:</p> <ol style="list-style-type: none"> 1. Rudy Torres with Adams County Housing Authority 2. Liz Bertsch with DHI Mortgage 3. John Bauer with Homeownership for Life 4. Glen Dooley with Mac5 Mortgage 		
<p>Public Comments:</p> <p>John Bower CEO of Homeownership for Life stated: I think what the task force is doing with talking about regulating the loan mod piece is absolutely necessary. 1 of 3 people who are coming to us for modifications have been harmed by an upfront fee they paid to a company who never talked to their lender. They come to us \$3,000.00 out of pocket and are happy that we charge no upfront fee. The escrow account piece is interesting also. We use an escrow account and it is immensely helpful because if they don't get their loan modification, meaning a permanent modification, the account gives us the confidence that they have the money to pay us. Those are some ways we are practicing the loan modifications right now. Anybody that would like to see how we are working, we have a team of 20 people doing loan modifications at our office, you can come down and check us out.</p> <p>Rudy Torres with Adams County Housing stated: I've personally met with over 500 families going over their budgets. People come to me and say that they haven't gotten anything. After talking to over 1,000 families, you would think that someone would have had one completed. I haven't seen anything completed. The upfront fee is a way for the company to take advantage. They are not using great logic, they usually don't come from sophisticated backgrounds but they are still being taken advantage of.</p>		