

Agenda

2008-2009 Mortgage Broker Rulemaking Task Force

**January 14, 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: Anita Padilla, Bart Bartholomew, Brad Groves, Bill Kidwell, Charles L. Workman, Dan Eason, Geoffrey Schroder, Jan Zavislan, Lainey Hamrick, Stacey Harding and Jason Lyon.

Agenda topics

9:00 – 9:30 a.m.	Upfront Compensation Collected	Cary Whitaker
9:30 – 10:00 a.m.	What constitutes an advertisement?	Cary Whitaker
10:00 - 10:15 a.m.	Break	N/A
10:15 - 10:50 a.m.	Defining Discount Points and a Par Rate	Cary Whitaker
10:50 – 11:00 a.m.	Public Commentary	Cary Whitaker

Minutes

Mortgage Broker RuleMaking Task Force

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Task Force Members Present: Anita Padilla, Bart Bartholomew, Brad Groves, Bill Kidwell, Charles L. Workman, Dan Eason, Geoffrey Schroder, Lainey Hamrick and Stacey Harding.

9:00 – 9:30 a.m.	Upfront Compensation Collected	Cary Whitaker
<p>Discussion:</p> <ol style="list-style-type: none"> 1. Section 12-61-915, C.R.S. of the mortgage broker statutes addresses compensation. <ol style="list-style-type: none"> a. In summary, this section does allow a mortgage broker to charge a fee of \$300.00 if the mortgage broker has obtained a written commitment from the lender for loan terms agreed to by the borrower and the transaction does not close through no fault of the mortgage broker; b. Regarding third-party fees and costs, section 12-61-915(3), C.R.S. does allow mortgage brokers to collect such fees up front. Additionally, it requires mortgage brokers to refund monies for third-party services not rendered and prohibits mortgage brokers from charging more for the services than they actually cost. 2. Mortgage broker statutes and regulations are silent regarding whether or not mortgage brokers may collect compensation up front. 3. Should mortgage brokers be able to collect compensation up front? 4. If so, how should these monies be managed? I.E. with a trust or escrow account? 		
<p>Results:</p> <ol style="list-style-type: none"> 1. Cary Whitaker began the discussion by explaining that it is rare to see upfront compensation collected on standard purchase and refinance transaction. Rather that most upfront compensation is collected on loan modifications. Specifically, consumers should have the same rights or protections specific to loan modifications as they would on any refinance or purchase transaction. Such rights includes transparency and accountability for standards of conduct defined by law. Under current law, mortgage brokers may collect up to \$300.00 if the lender has approved the transaction, the borrower has agreed to the terms and the loan does not close through no fault of the mortgage broker. 2. Anita Padilla stated that mortgage brokers should be able to collect upfront compensation. Specifically, that consumers can take advantage of the market, while companies have to invest in staff, leases, paper, copy machines and that lenders have to hedge positions to protect interest rates. Anita stated that she does think upfront compensation is fair. 3. Brad Groves asked if this discussion would be necessary if it wasn't for loan modification business. 4. Cary Whitaker replied that this is primarily where it is being collected. 5. Anita Padilla asked if they could charge a lock-in fee. 		

6. Cary Whitaker explained that lock-in fees and any other lock-in terms must be disclosed on the lock-in disclosure form. Additionally, the conversation was brought back to deal specifically with upfront compensation and whether or not it should be allowed since current statutes are silent on this issue.
7. Geoff Schroder asked if we had taken any enforcement actions against individuals keeping more than the \$300.00 and if our laws were adequate to enforce this.
8. Cary Whitaker discussed the timelines of the loan modification investigations. Specifically, that the Director has not taken any enforcement actions against these individuals since the investigations are still in the information gathering stage, but felt the laws were adequate.
9. Brad Groves proposed defining a contract for mortgage brokers and consumers on loan modifications. Such contracts could define all issues surrounding compensation. This may be easier for the Division to only have to review one contract as opposed to the many being created in the marketplace.
10. Stacey Harding discussed the need for upfront fees to be collected on loan modifications. Specifically, borrowers may not honor the contract signed with the loan modification company. Specifically, if these fees are not collected upfront, there may be a high instance of non-payment.
11. Cary Whitaker outlined two major issues if fees are not collected upfront:
 - a. Loan modification borrowers have a demonstrated a history of delinquency and payment may only be collected if it is done so upfront; and
 - b. If the compensation owed to the loan modification company was in their savings account, the loan modification would become unlikely due to the funds present. Such funds often represent one months mortgage payment.
12. Cary Whitaker proposed taking a vote on whether or not upfront compensation should be allowed. Essentially, the entire task force, with the exception of Anita Padilla refraining from voting, agreed that upfront compensation should be allowed.

Action Items: None

Person Responsible: N/A

Timeline: N/A

Discussion:

1. Rule 8-1-1, entitled *Mortgage Broker Advertising*, defines advertising as any commercial message that promotes consumer credit. Advertisements may appear:
 - a. In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;
 - b. On radio, television, or a public address system;
 - c. On an inside or outside sign or display, or a window display;
 - d. In point-of-sale literature, price tags, signs, and billboards; or
 - e. Online, such as on the internet.

2. Rule 8-1-1 adopts standards defined in the Truth in Lending Act, staff commentary at the FTC and requires the following on all forms of advertising:
 - a. A responsible party;
 - b. License number, if applicable, or name of responsible party;
 - c. Mortgage company name;
 - d. Business address;
 - e. Business phone number; and
 - f. A statement for borrowers to check the license status of their mortgage broker along with the Division of Real Estate's website – <http://www.dora.state.co.us/real-estate/index.htm>.

3. What constitutes an advertisement?
 - a. Does this include business cards?

b. Does this include company websites?

c. Any other areas of concern?

Results:

1. Cary Whitaker stated that the Director, by rule, adopted the Truth and Lending definition of an advertisement which is: any commercial message which promotes consumer credit. Advertisements may appear in newspapers, magazines, leaflets, on radio, t.v., sign or display, billboards or online. We've also added a handful of extra things that need to be included in all these ads. First, every advertisement must have a responsible party. The advertisement must contain the responsible parties license number if it's applicable. If that party works for a state bank and they are not required to be licensed, it needs to contain their name. It needs to have the name of the company, address, phone number and a statement and link to the state of Colorado's website so that the responsible party's license can be confirmed. The question is what constitutes an advertisement? Some of the grey areas include business cards, websites, real estate networking sites etc.
2. Anita Padilla stated that we want their license and an electronic signature on their business card. The purpose is so that the consumer knows how to research that and make sure that they are licensed. For my employees, as their business cards come up for renewal, I am requiring that they add that to their new cards. At the end of the day, there is only so much you can put on there before it gets too crowded.
3. Brad Groves stated that with advertising, there is the Truth in Lending and the FTC which are kind of the triggering terms for advertising and I think that's appropriate, as far as if you are advertising interest rate then I think that's all part of the triggering terms that the Division kept consistent with the FTC. I'll say that the business card is not advertising alone either in the Colorado post legislation of the SAFE act itself, business cards is kind of one of those items that's itemized as an indication that somebody is offering mortgage broker services.
4. Geoff Schroder added that he thinks there has to be some way that the Division keeps it reasonable. The division doesn't want to have to spend its time hunting down cases regarding business cards for a lack of link to the Division. What your going to find is people are going to put everything in mouse type because that's the only way it going to fit on the business card, then your violating other rules possibly for advertising. I think the Division wants to be careful not to overstate what it has to be on because you don't want to waste your time on little cases involving business card fraud. If someone is advertising a rate without an APR on their business card, they are doing it undoubtedly doing it elsewhere, newspapers or internet, somewhere that is causing more substantial harm. You might have the authority to put business cards on there but then your getting into the slippery slope of what happens now when I put my company logo up where there is a raffle being held. Do I now have to put the link to the Division up as well? This is going to be a colossal waste of your time.
5. Cary Whitaker stated this was an issue raised by Bill Kidwell.
6. Bill Kidwell stated that he was seeking clarity.

7. Bart Bartholomew stated that all advertising is marketing, but not all marketing is advertising. Based on that I do not feel business card fits the definition of advertising. I think it would be easier to solve your problem without having to comply with all these sets of data that could continue to grow. There is too many things that we are required to do based on that to force the mortgage broker himself to add something else on there that is out of our control is a bit of a stretch. I wanted to see a simplistic answer regarding business cards because it's a marketing material, not an advertisement.
8. Charlie Workman asked does that mean that I would need to put the link on the sign on my door, where it states my company's name? Do I need to have the link on there too? So if we have our name on the door saying we reside in this particular suite, in this particular building, were in violation of the law without that link on there? Were do we put the number? We put my name and a responsible party? We've gone a little overboard I think.
9. Geoff Schroder agreed that you can overdo it as well and from a business perspective in Colorado, the last thing you want is something that says that the state of Colorado has gone down to the minutiae of business card regulation. It's just another thing that is going to push business out of the state. I think the regulations are fairly clear, the Division only has limited resources as to what they want to apply to. I don't think that business cards or storefront signage is a big problem that the Division wants to put its time, effort and money into.
10. Stacey Harding wanted the task force to think about the signs on the street that say Cherry Creek Mortgage, I see those more as identifiers. Now if I had a marquis out there that said "See us for 4% interest rates", or if I decided to put that on my business card, then Id think that falls into advertisement, and the rules are already in place for advertisement.
11. Cary Whitaker clarified that we do not want to be picking and choosing what is included and what is not. Those lists are outdated as soon as they are created. In the end, if it promotes consumer credit, it is an advertisement, regardless of the format.

Action Items: None

Person Responsible: N/A

Timeline: N/A

10:00 – 10:15 a.m.	Break	

1. Discussion: Defining Discount Points and a Par Rate.
 - a. What is the task forces perception of a discount point?
 - b. Does a discount point mean buying a rate down below par?
2. Proposed definitions:
 - a. Discount Point -
 - i. Discount point means fees paid to a lender at closing in order to lower a borrowers' interest rate below the par rate.
 - b. Par Rate -
 - i. Par rate means an interest rate used as the reference point for which a mortgage lender will neither pay compensation no require discount points for a mortgage loan.

Results:

1. Cary Whitaker opened up this discussion by asking, conceptually, what do you feel a discount point is?
2. Stacey Harding stated a discount point is when you are buying down the interest rate.
3. Cary Whitaker asked, from any level ?
4. Stacey Harding replied Yes. From the lender's established rate.
5. Anita Padilla stated that discount points should not be a loan officer's compensation. It should go to buying down the interest rate as Stacy stated.
6. Brad Groves proposed that a discount point is just a fee charged that is either paid to the lender or the broker for that matter. To say that it's to lower the rate, it may not be.
7. Stacey Harding replied, I think it is at that particular originator. If you define the mortgage broker as a mortgage loan originator, whether they're at Bills shop, or Cherry Creek Mortgage, my par rate may be very different than Bill's par rate because of the margin of revenue that we need to have in the transaction in order to pay for our overage in the industry.
8. Cary Whitaker asked if it's based on the par rate? What were seeing is the charging of a discount point and maybe buying it down from this rate to here.
9. Stacy Harding stated the question of par is what is a lender giving a broker in yield spread premium. That broker, unless they can work for just the origination fee, maybe they can, but my company couldn't work for just the origination fee, so I have to find some level of margin to

that. My margin might be 2 points, and so six and a half might have a 1 discount point.

10. Bill Kidwell followed stated that par in general has been in the industry since 92, when yield spread came out. The pricing between a wholesaler and a retail outlet that's selling that service is their price. Colorado and the industry in general has decided that the pricing needs to be transparent and I think we've done more job of disclosing to the consumer what the prices are. And the relevance, there is no relevance between my par price and the question that's being asked here as long as its disclosed on the broker disclosure form that says here is how the everybody is getting paid. After that, they don't even need to think about the term par.
11. Cary Whitaker asked, so you're saying that if they're charging a point in discount and some of that goes to the MBs compensation, as long as it's disclosed as compensation, then its fine?
12. Bill Kidwell answered, yes, that's my opinion.
13. Anita Padilla stated that we have to issue a statement of interest every year. In that statement of interest is a discount. A discount is prepaid interest, so if that discount really was a prepaid interest, and it was revenue to a company and or compensation to the loan officer, that's how we view it. YSP is booked as an expense and or commission, overage, what have you, a discount collected from a consumer we issue as an interest payment because it was prepaid interest, so it is not compensation.
14. Bill Kidwell followed with, from a loan originators standpoint, lets say I'm trying to deliver to a consumer at 99.5, if I want to make a dollar on that transaction myself and not have to pay that, I basically have to modify my origination fee because of the yield spread issue. It's origination that gets booked on the front end. Now how that gets treated by an accountant or amortization of a refinance or discount points
15. Cary Whitaker stated that the Divisions concern was in how discount points were represented. Why not define it? If they want to make other compensation they can all it origination, they can call it administrative but I'm wondering if by calling it a discount point there is inherent deception in there when they treat it as compensation. It isn't well understood in the industry. We've already had three or four different definitions or perception as to what it is and what it's applied to. That's why I'm raising this issue because I don't think it's clearly understood or treated the same from mortgage company to mortgage company. I think every mortgage broker and company treats it however they want and I don't think there is common ground on what a discount point is. I'm proposing it to see if we need to define it.
16. Dan Eason stated that I think your saying from the consumer perspective you would rather see it called origination than discount because discount implies that it's not going to the broker in any way.
17. In the end, the task force agreed that any portion of the discount point that may end up as compensation must be disclosed as such, at a minimum, on the Colorado Compensation Disclosure form.

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: <ol style="list-style-type: none"> 1. Liz Bertsch w/ DHI Mortgage 2. David Nelson w/ American Summit Mortgage 3. Terry Jones w/ CMLA 4. Douglas L. Braden w/ CAMB 5. Kay Cleland w/ CAMB 6. Kate Gardner w/ Gardner Financial 		
Public Comments: None		