

Agenda

2009-2010 Mortgage Loan Originator Rulemaking Task Force

**December 16, 2009
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 – 9:30 a.m.	Mortgage Company Regulation in Colorado	Cary Whitaker
9:30 – 10:00 a.m.	When is an application an application?	Cary Whitaker
10:00 -10:15 a.m.	Break	N/A
10:15 – 10:50 a.m.	Issues surrounding the new Good Faith Estimate requirements in relation to Colorado required disclosures	Cary Whitaker
10:50 – 11:00 a.m.	Public Commentary	Cary Whitaker

Minutes

2009-2010 Mortgage Loan Originator Rulemaking Task Force

**December 16, 2009
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: Tammy Trucker, Wade Warthen, Alicia Arguello, Steve Peyton, Libby Wittman, Brad Groves, Bruce Jordan, Bart Bartholomew, Doug Braden, Jan Zavislan, Carolyn Carnie, Paul Orrell and Rod Shuster.

Discussion:

1. 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.
2. 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:

1. Cary Whitaker began the discussion by reflecting on what he had asked the task force to do between meetings. Essentially, he had asked them to review section 12-61-911, C.R.S. to determine what standards of conduct and prohibitions would be appropriate for mortgage companies.
2. Cary Whitaker began by explaining some of the provisions in section 12-61-911, C.R.S. Such prohibitions include:
 - a. defrauding consumers and lenders;
 - b. obtaining a property by fraud;
 - c. Advertising or entering into a contract for terms unless they are actually available;
 - d. Failing to make proper disclosures;
 - e. Misleading consumers w/ false statements;
 - f. Making false statements or omitting information during an investigation;
 - g. Failing to comply w/ applicable federal laws;
 - h. Failing to pay a third-party service provider; or
 - i. Collecting illegal compensation.
3. Suggestions of standards of conduct or prohibitions suggested in the previous meeting included:
 - a. Compliance w/ all state and federal laws. This was suggested by Brad Groves.
 - b. Addressing document retention at the company level vs. the individual level. This was suggested by Doug Braden.
 - c. A reasonable supervision requirement.
 - d. Unlicensed activity.
4. Bruce Jordan asked how would these standards be regulated? By the Director or a judge?
5. Cary Whitaker explained the administrative process which is defined by the Colorado Administrative Procedures Act.
6. It was quickly determined that the task force would not be able to reach a consensus. As a result, the task force began defining different options for mortgage company standards of conduct and regulation. They were as follows:
 - a. **Option 1:**
 - i. Mortgage companies would be responsible for unlicensed activity;
 - ii. Mortgage companies would be prohibited from defrauding consumers and lenders;
 - iii. Mortgage companies would be prohibited from obtaining a property by fraud;
 - iv. Mortgage companies would be prohibited from advertising or entering into a contract for terms unless they are actually available;

- v. Mortgage companies would be prohibited from failing to make proper disclosures;
 - vi. Mortgage companies would be prohibited from misleading consumers w/ false statements;
 - vii. Mortgage companies would be prohibited from providing false statements or omitting information during an investigation;
 - viii. Mortgage companies would be required to comply with applicable federal laws;
 - ix. Mortgage companies would be required to pay third-party service providers;
 - x. Mortgage companies would be prohibited from collecting illegal compensation;
 - xi. Mortgage companies would be responsible for document retention; and
 - xii. Mortgage companies would be responsible for reasonable supervision regarding their originators conduct in relation to deceptive and fraudulent trade practices.
- b. **Option 1 was the most comprehensive list of standards. The following individuals voted for this option:**
- i. Jan Zavislan;
 - ii. Libby Wittman;
 - iii. Tammy Trucker; and
 - iv. Paul Orrell.
- c. **Option 2:**
- i. Mortgage companies would be responsible for unlicensed activity;
 - ii. Mortgage companies would be prohibited from deceptive advertising;
 - iii. Mortgage companies would be responsible for document retention; and
 - iv. Mortgage companies would be responsible for supervision of their originators specific only to conduct relating to advertising, unlicensed activity and document retention.
- d. **Option 2 was the least comprehensive list of standards. The following individuals voted for this option:**
- i. Bart Bartholomew;
 - ii. Brad Groves;
 - iii. Wade Warthen;
 - iv. Rod Shuster;
 - v. Bruce Jordan; and
 - vi. Carolyn Carnie.
- e. **Option 3:**
- i. Mortgage companies would be responsible for unlicensed activity;
 - ii. Mortgage companies would be prohibited from deceptive advertising;
 - iii. Mortgage companies would be responsible for document retention; and
 - iv. Mortgage companies would be responsible for reasonable supervision regarding their originators conduct in relation to deceptive and fraudulent trade practices, unlicensed activity, deceptive advertising and document retention.
- f. **Option 3 represented a compromise between option 1 and option 2. The following individuals voted for this option:**
- i. Alicia Arguello;
 - ii. Doug Braden; and

iii. Steve Peyton.

7. While these options were being defined, several comments were made about some of these standards.
8. Bruce Jordan stated that he didn't think we were here to discuss company standards.
9. Cary Whitaker reiterated that this was the topic on the agenda and that the task force had only been discussing company standards over the past two meetings.
10. Carolyn Carnie stated that she felt it was too difficult for a company to check the license status of 500 employees.
11. Bart Bartholomew mentioned that we may want to be careful regarding document retention and how it may impact independent contractor processors who are required to become licensed in 2010.
12. Jan Zavislan proposed a safe harbor for companies where they would be less accountable for the actions of their originators if policies and procedures were in place that the originator had agreed to abide by.
13. The task force moved to discuss disciplinary tools which should be applicable for company registration. Cary Whitaker outlined existing disciplinary tools that currently exist for individual mortgage originators. Such tools include: fines; cease and desist orders; injunctions; restitution; actual damages; ability to deny; refuse to renew and revoke licenses; probation; and public censure.
14. Brad Groves stated that he was opposed to restitution.
15. Wade Warthen suggested that there be some caps or limits to any fines.
16. The task force was unable to come to a consensus regarding disciplinary tools. As a result, 5 options were defined to allow participants to vote. The options were as follows:

a. Option 1:

- i. Included the following disciplinary tools:
 1. Fines with no cap;
 2. Cease and desist orders;
 3. Injunctions;
 4. Restitution;
 5. Actual damages;
 6. Probation;
 7. Public censure; and
 8. The ability to deny, refuse to renew and revoke a registration.

ii. None of the task force participants voted for this option.

b. Option 2:

- i. Included the following disciplinary tools:

1. Fines with the following provisions:
 - a. A fine no greater than \$1,000.00 in the 1st administrative proceeding;
 - b. A fine up to \$2,000.00 in subsequent administrative proceedings.
2. Cease and desist orders;
3. Injunctions
4. Probation;
5. Public censure; and
6. The ability to deny, refuse to renew or revoke a registration.

ii. The following individuals voted for this option:

1. Brad Groves; and
2. Tammy Trucker.

c. Option 3:

i. Included the following disciplinary tools:

1. Fines with the following provisions:
 - a. A fine equal to the amount of compensation on a loan when an element of unlicensed activity, fraud or deceptive trade practices exist.
 - b. In all other disciplinary matters, a fine no greater than \$1,000.00 in the first administrative proceeding; and
 - c. A fine no less than \$1,000.00 or greater than \$2,000.00 in subsequent administrative proceedings.
2. Cease and desist orders;
3. Injunctions;
4. Probation;
5. Public censure; and
6. The ability to deny, refuse to renew or revoke a registration.

ii. The following individuals voted for this option:

1. Rod Shuster;
2. Jan Zavislan;
3. Paul Orrell;
4. Doug Braden;
5. Carolyn Carnie;
6. Libby Wittman;
7. Steve Peyton; and
8. Alicia Arguello.

d. Option 4:

i. Included the following disciplinary tools:

1. Fines with the following provisions:
 - a. Fines no greater than \$1,000.00 in the first administrative proceeding; and
 - b. Fines no less than \$1,000.00 or greater than \$2,000.00 in subsequent proceedings.
2. Cease and desist orders;

3. Injunctions;
4. Restitution;
5. Actual damages;
6. Probation;
7. Public censure; and
8. The ability to deny, refuse to renew and revoke a registration.

ii. The following individual voted for this option:

1. Wade Warthen

e. Option 5:

- i. Included the following disciplinary tools:

1. The ability to deny, refuse to renew and revoke a registration.

ii. The following individual voted for this option:

1. Bruce Jordan

Action Items: Convey results of mortgage company regulation to the Director.

Person Responsible: Cary Whitaker

Timeline: January 12, 2010

9:30 – 10:00 a.m.	When is an application an application?	Cary Whitaker
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Discussion:

1. Current RESPA definition of an application is as follows:

- 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.

2. Is this definition adequate?

3. What, if any, improvements exist?

Results:

1. Cary Whitaker began this discussion by reviewing HUD's proposed definition of an application.
2. Wade Warthen suggested adopting HUD's definition.
3. Bruce Jordan agreed that the HUD definition should be adopted.
4. Brad Groves asked what was trying to be accomplished.
5. Cary Whitaker answered that we are trying to provide clarity to the industry.
6. The task force reached a consensus that HUD's definition of an application should be adopted by rule.

Action Items: Draft proposed rule adopting HUD's definition of an application.

Person Responsible: Cary Whitaker

Timeline: January 12, 2010

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

10:15 – 10:50 a.m.	Issues surrounding the new Good Faith Estimate requirements in relation to Colorado required disclosures	Cary Whitaker
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Discussion:

1. Background:

- a. HUD has created a new Good Faith Estimate form. This new form is required on or after January 1, 2010.
- b. The new form is three pages as opposed to the past one page disclosure
- c. All front end compensation, back end compensation, lender fees and all other fees are categorized as “origination fees” on the new form. There is a zero tolerance level established for variances regarding origination fees.
- d. Third party fees are required to be disclosed. For third party services shopped for by the originator, there is a 10% tolerance level established for variances in these costs.
- e. Originators are required to provide a list of third party services they wish the borrower to shop for during the transaction. In this section, there is no tolerance level established for variances in such fees.
- f. HUD also created a revised HUD-1 settlement statement that is more consistent with the Good Faith Estimate form.

2. How will the new forms affect Colorado required disclosures? Colorado requires the following:

- a. Itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection and any other third-party service providers;
- b. Disclosure of all compensation on the loan; and
- c. Disclosure of all finance terms.

3. Colorado regulations require that front end compensation and back end compensation be disclosed on the Colorado compensation disclosure form.

- a. If the new Good Faith Estimate does not itemize all origination fees, how will the Division verify actual front and back end compensation?

4. What are the concerns of the task force in regards to this new form and existing disclosures?

Results:

- 1. Cary Whitaker began this discussion by providing a brief background on the new Good Faith Estimate disclosure form developed by HUD. He asked the task force to begin thinking about how this new form will affect current Colorado disclosure forms.
- 2. Wade Warthen asked if the current compensation disclosure form was necessary in light of the changes to the Good Faith Estimate.
- 3. Cary Whitaker explained that current Colorado law requires disclosure of compensation. Since compensation is lumped into origination fees, while subtracting YSP, the new Good Faith Estimate does

not meet Colorado standards. Additionally, the Good Faith Estimate does not require compensation derived from service release premium to be disclosed. Colorado law does require disclosure of such compensation.

4. Tammy Trucker suggested changing current Colorado specific disclosure forms to accommodate any gaps.
5. Doug Braden read a position statement from CAMB that highlighted the real impact of compensation disclosure to the public. Essentially, the position statement surmised that compensation should not be important to a consumer when deciding on mortgage related financing.
6. Cary Whitaker ended the meeting by asking everyone to visit this issue and to come to the meeting in January with some ideas on possible solutions.

Action Items: Task force to review this issue.

Person Responsible: All task force participants

Timeline: January 12, 2010

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: None		