

Agenda

2008-2009 Mortgage Broker Rulemaking Task Force

May 13, 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.	Preliminary Advisories	Cary Whitaker
9:30 – 10:00 a.m.	Nullification Process	Cary Whitaker
10:00 - 10:15 a.m.	Break	N/A
10:15 – 10:50 a.m.	Brainstorming for Future Rules	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, Jan Zavislan, Stacey Harding.
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Discussion:

1. What should this process look like?
2. What specific criteria should individuals be able to seek preliminary advisories?
 - a. Criminal background;
 - b. Past licensing issues; and/or
 - c. Past issues that have led to the individual being enjoined within the immediately preceding 5 years.
3. Should the preliminary advisories be posted on the website?

Results:

1. Cary Whitaker began the meeting by reminding everyone that this is the last task force meeting. The New Year will start up in July 2009. The division will be going to all of the associations asking who they would like as representation. This is the times for all of those on this year's task force meeting to either think of others to replace them or if they want to sit on the task force for the New Year (2009/2010). An update was provided on House Bill 1085, stating it will be affective 90 days from when the General Assembly adjourns on August 06, 2009. Cary Whitaker informed the Task force that we had a packed house with standing room only for the Rule making hearing on May 04, 2009.
2. Cary Whitaker then initiated the discussion about Preliminary Advisories. Due to a change in the process and an increase in expense the Division would like to explore the idea of preliminary advisories. Allow someone to see if they are even eligible to be a licensed mortgage broker prior to applying and paying the fees associated with becoming a mortgage broker. The Division would want to limit this to criminal background issues. We would like to charge a fee for this service due to the expense of reviewing documents as well the Division would like to make the decision/opinions public.
3. Bill Kidwell would like to see this as something considered on the 120 day temporary license.
4. Cary Whitaker states how this would take place prior to the temporary license. Because with a temporary license the applicant is going to have the expense of a surety bond and errors and omissions. The temporary license is primarily to allow a mortgage broker to be working while waiting for the results of the FBI/CBI finger print results.
5. Bart Bartholomew and Stacey Harding both support the idea of having a preliminary advisory process in place.
6. Cary Whitaker asks if everyone is on board to make the preliminary advisories public.
7. Jan Zavislan is not in favor for them to be made public. He feels that it may be a disincentive for someone to apply if they know that this will be on a website that is out there and available to the public. They may want to keep this as a discreet inquiry to see if they qualify.

8. Bart Bartholomew feels we are sending people to the DORA web site to see if people are licensed. The Division isn't sending people to see if someone has been denied but rather they are approved and licensed.
9. Cary Whitaker states the Division wants the public to know who is licensed as well as who is not licensed. We want the public to be able to know that the person they are talking with or that may be trying to originate their loan has been denied a license.
10. Stacey Harding stated he thinks the intent of the preliminary advisory is to provide an opinion. You are not denying them but providing an opinion. The denial process would take place at the time of making application at which time it would be made public.
11. Cary Whitaker asked for a vote as to "Who thinks preliminary advisories should be posted to the DORA website"

Charles Workman: No

Bill Kidwell: No

Stacey Harding: No

Dan Eason: No

Brad Groves: No

Bart Bartholomew: No

Anita Padilla: Yes

Jan Zavislan: No

Action Items: Draft preliminary advisory rule

Person Responsible: Cary Whitaker

Timeline: ASAP

Discussion:

1. The S.A.F.E. Act disqualifies applicants if they have ever had a mortgage loan originator licensed revoked in any governmental jurisdiction.
2. The CSBS Model Act states (1) NO LICENSE REVOCATION—
 - a. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
 - b. HUD has reviewed and approved the model law.
3. House Bill 09-1085 disqualifies individuals who have had a mortgage loan originator license or similar license revoked in any other jurisdiction; except that a revocation that was subsequently formally nullified shall not be deemed a revocation for the purposed of this section.
4. Background:
 - a. Many mortgage brokers have been revoked or have voluntarily surrendered their license which, per our stipulated agreements, is the same as a revocation.
 - b. Some mortgage brokers, facing allegations of fraud or deceptive practices, have chosen to voluntarily surrender their license rather than face the scrutiny of an investigation.
 - c. Some of these mortgage brokers choose revocation over paying fines for non-compliance with requirements such as the errors and omission insurance or the surety bond.
 - d. Some mortgage brokers requested voluntary surrenders after findings of fact by the Director.
5. As a result, some revocations may not warrant one being permanently bared from licensure.
6. The Director may want to establish a process where cases may be individually reviewed and revocations nullified when appropriate.
7. What should this process look like?
8. Should the results be posted on the website?
9. What are appropriate timelines?

1. Results: Cary Whitaker begins the discussion by explaining people have voluntary surrendered their mortgage broker's license and at this time are unable to go back into the industry for a two year period.

Now the S.A.F.E. Act disqualifies applicants from ever returning to the industry. The Division would like explore the opportunity to have some sort of vacation of revocation so that some individuals are not permanently bared from the industry. This is a process that the Division would like to open for individuals who would like to return to the industry, and would be a decision that is solely up to the Director.

2. Stacey Harding states he is in favor of the nullification process since the S.A.F.E. Act would not allow an individual to return to the industry.
3. Brad Groves states that rather than just drawing the line at having this process in place just for compliance issues maybe the Division raises the bar to have the mortgage broker pay a higher fee to have the investigation reopened. I don't think it is appropriate to have the new licensed mortgage brokers paying for the investigation of somebody that wants to return to the industry just because the investigation fees need to be spread out amongst the licenses. If someone wants to pay for it and subject themselves to this investigation then let them.
4. Bart Bartholomew would like to see the process expanded to allow an inactive status rather than doing a voluntary surrender.
5. Cary Whitaker explains that a mortgage broker can choose to place their license on an inactive status at this time. Now they can't do this eight months after they have been non compliant. In a perfect world a licensed mortgage broker will place their license to an inactive status prior to becoming non-compliant. This is considered a license status change. It is not a discipline. Moving forward at this time we are reviewing and changing the language to a two year relinquishment.
6. Bill Kidwell would like a clarification as to the difference between voluntary surrender and the placing the license as inactive.
7. Cary Whitaker explains that a mortgage broker can be active and compliant today and request to have their license placed on an inactive status. While on the inactive status a mortgage broker would be required to follow through with education. Now if that mortgage broker is holding an active license and does not do the required education then they could be found to be out of compliance and are subject to disciplinary action(s). As a means to settlement to disciplinary action the mortgage broker may choose to voluntarily surrender their license as opposed to paying fines. And all voluntary surrenders state that they are revocation. And revocation states that they will stay out of the industry for two years.
8. Charles Workman asks if a mortgage broker is inactive can they just request to be placed active at any time.
9. Cary Whitaker explains that a mortgage broker would just need to show the Division that they are in compliance with errors and omissions, surety bond, education, exams and complete the mortgage brokers update form. Then the Division would re-activate their license.
10. Jan Zavislan just wants to make the point that going inactive does not shield a mortgage broker from prosecution by the Division. So the Division can still go after an inactive license and set whatever penalties, revoke, and whatever disciplinary actions need to be taken even though the licensee is inactive. By placing your license to an inactive status does not shield a mortgage broker in any way.

11. Cary Whitaker confirms this statement. Placing a license inactive is just a status change. Some people may try to use this as a loop hole, but essentially its not if the Division finds out the mortgage broker is not compliant then they are subject to disciplinary actions by the Director.

12. No Vote is needed as the task force seems to be on the same page... for narrowing the scope to compliance reasons for the nullification process, with no time line on these as if the Division needs to re-open an investigation it does not take priority over the other more president investigation that are being conducted. And that a decision for a possibility to nullify a revocation is placed on the DORA web site.

Action Items: Draft nullification process rule

Person Responsible: Cary Whitaker

Timeline: ASAP

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

Discussion:

1. Rules already on the horizon:
 - a. Renewal rule;
 - b. Education transition rule;
 - c. Financial responsibility rule/position statement;
 - d. Finger print transition rule;
 - e. Nullification Process rule;
 - f. Pre-Qualification rule;
 2. What other topics would the task force like the Division to address moving forward?
 3. Future task force participants: Please have interested individuals contact the Division of Real Estate.
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1. Results: Cary Whitaker asks the Task Force if they think that the criminal background check should have applicants do both processes until the FBI institutes a flag system. Task Force Votes: CWorkman: Yes BK: Yes SH: Yes DE: Yes BG: Yes BB: Yes AP: Yes JZ: Yes
 2. Cary Whitaker addresses transitioning the required education. Cary Whitaker explains that some states had made their licensees redo their education three years after the fact. Unfortunately, every Colorado licensee has done the education immediately preceding the SAFE Act. The current requirements are completion of 40 hours of education and passing of a two part test. First part being state and federal law, the second being mortgage lending basics. Prior to January 1, 2009, the passing rate was 70%. It was increased to 75% in lieu of the SAFE Act. SAFE Act requires 20 hours of classes and passing of a two part test at 75% or better. The two parts are state specific portion of the tests and everything else. Everything else includes practice standards, ethics, federal laws, non traditional mortgage products and things like that. What we hear from the Nationwide Registry is that people who passed our test with 75% or better will be exempted form the 20 hours of classes and most likely they will be exempted from the state specific portion. They will all have to take the National portion of the test with 75% or better. They will have to do that and be registered by July 31, 2010. The DRE is scheduled to be on the Nationwide Mortgage Licensing System and Registry by January 1, 2010. The education and testing is not available until we are on the system. The dilemma is when to transition. Cary Whitaker proposes that we completely transition January 1, 2010. Any new applicant will only have to complete the education and pass the test that is developed and administered by the Nationwide Mortgage Licensing System and Registry. Any thoughts on this?
 3. Bart Bartholomew asks if we are talking about reducing the hourly education from 40 hours down to 20 hours.
 4. Cary Whitaker explains that we are talking about transitioning over to pre-licensing education and a test that is completely compliant with the SAFE Act and that is completely developed and administered by the Nationwide Mortgage Licensing System. The education will most likely be 20 hours.

5. Bill Kidwell asks they are going to be tested on this but they won't have the education? As I understand, a 20 hour test is all based on an incoming person brand new to the business. Where does the state portion come in?
6. Cary Whitaker states that he does not know how they will be developing the state classes and how many hours they are allotting to state specific content. We will begin developing the state specific portion of the test but I can tell you that the 20 hours is a minimum. That doesn't prohibit anyone from taking additional classes on top of that. Do you want those classes to be mandated? We can mandate more education but it may be a messy process.
7. Anita Padilla clarifies that the question is that we used to have 40 hours, and if we were to adopt this, after January 1, it would be 20 hours?
8. Cary Whitaker states that whatever the pre-licensing education is, it will be developed and administered by the Nationwide Registry. It could be more than 20 hours. That's a minimum so if someone wanted to take further education on state specific laws, they certainly could do that.
9. Bart Bartholomew states that the state of Maryland has rolled back education. They will not be testing on the state portion.
10. Cary Whitaker states that Maryland is not defining the process, the Nationwide Registry is. Additionally, they will be tested on the state information. There is no way that the state of Maryland can not test them. They are not in control of the administration or development of the test. The Nationwide Registry has made it clear that every state has to have a state specific portion to the test. I don't know if your issue would be resolved by us mandating it and then reviewing and approving those courses, which may or may not be duplicated, or we just completely transition to the education and testing administered by the Nationwide Registry and any additional classes they want to take, they can certainly do so.
11. Bart Bartholomew asks if they did the continuing education, would the state recognize it now as part of the requirement for the continuing education. Cary Whitaker says we can deal with continuing education after this topic.
12. Cary Whitaker asks if there are any ideas on the best way to transition. We are thinking completely transition over the January 1, 2010 for new applicants.
13. Bill Kidwell states that maybe this would be a time to consider, in a temporary licensing kind of way, allowing the people who are coming in from now until the end of the year, to continue to be a fully licensed broker and not have to go through the Colorado 40 hours but rather get teed up to go through the 20 hours on January 1 so they don't have to do it twice. They are still signing under somebody else's authority, but it prevents them from having to do it twice.
14. Cary Whitaker states that that is not really a reality until August 6, when the bill truly becomes effective. We could notify them that if they chose to become licensed prior to January 1, 2010, they will have to do our education and testing and take the national test. I think we could leave it up to

them to make that decision on whether or not they should wait or fill it in and get licensed. You're proposing to stall the current education and testing requirements until January 1.

15. Bill Kidwell states that he is suggesting that it's a rule that could be modified. Were already accommodating a lot of people getting through this process. This is a way to really save some folks the extra headache of doing two times what they have to do to be at the same point.
16. Cary Whitaker states that if they are within 120 days of January 1, they will be able to do that so there will be a small window in which they would be able to. There will be 24 days.
17. Kidwell asks what is the 120 day window.
18. Cary Whitaker states that's how long you have to take the courses and pass the test. Under the temp license provision, they do have a window, I don't know if we would need to extend it 24 additional days to get to august 6. I think we need to notify people of what the process is.
19. Brad Groves asks on the 120 day window, there is no access to education or test prior, that would mean that that 120 days cant start and you cant use September or October, November or December because you cant do the education or take the test.
20. Cary Whitaker states that you would have to use your time within that temporary license period beginning January 1.
21. So you have to wait until January 1?
22. Bill Kidwell asks what the significance of August 6 is?
23. Cary Whitaker states that is when 1085 becomes a reality. The SAFE Act is not a reality in Colorado until 1085 becomes effective. The SAFE Act is really a mandate for states to adopt similar provisions. States can choose not to but the consequence is that the secretary of HUD will have to regulate their loan originators on top of any state regulations. They will most likely have to charge fees in order to run the program and do so but arguably it's not a reality until the state adopts those provisions. That happens August 6 in Colorado.
24. Brad Groves asks what are the other options besides doing this?
25. Cary Whitaker states that is why were proposing it to see what other ideas the task force has. With the extension process, the simpler we can make it the better. This will cause some confusion on its own merits. The education extension process was an extreme burden on staff. We thought we had defined a very simple process, it wasn't so. 1500 applied for the extension. We sent hundreds back to give them time to complete the process. 1200 received the extension. Only 700 of those 1200 passed the test by March 31. When your dealing with thousands of individuals, the simpler you can make it, the better for everyone.
26. Kidwell asks if we have gotten any input from the registry or CSBS armor about a clear anticipated timeline.

27. Cary Whitaker states its all ready except for the state specific section of the test.
28. Bill Kidwell asks have they delegated that workload to the states to generate those tests.
29. Cary Whitaker states yes. We will have to put together the subject matter. The data process will begin in November.
30. Kidwell asks if we could not get an advance or jump on the test in any fashion.
31. Cary Whitaker states we may be able to get a jump on the national portion but not the state portion. We will have to address this by way of rule.
32. Cary Whitaker states they haven't defined if they have to pass each portion of our test, or if it's cumulative.
33. Bill Kidwell asks if the people who got their license through the exemption, and only had to take 19.5 hours, what your saying is that the registry doesn't really care as long as the test is passed with a score of 75%, they will be included with the group that only has to take the national portion?
34. Cary Whitaker states they haven't gotten that deep into our exemption process. We created exemptions because those designations required a certain amount of hours in courses, attending training, speeches and things like that. One could certainly make a good argument that that designation would certainly make up for the .5 hour that would be missing.
35. Bill Kidwell asks based on what you understand, as long as the state licensed test result shows 75%, that will be ok?
36. Cary Whitaker states yes. What I understand is that if they have taken our state specific course requirements with the exemption, that will satisfy the 20 hours of education. If they passed the test with 75% or better, that will satisfy the state portion of the test but not the national. I want to propose one more transition issue that we are facing. Normally, people have to complete their education and examination prior to becoming licensed. In Colorado, once House Bill 1085 becomes effective, we have essentially seen six mortgage broker laws passed since 2006. What that means for us is that a lot of mortgage brokers had a license when the education and testing became a reality. What we did was we required them to take the education and pass the test while licensed. This is applicable to people who applied on and after January 1 of this year. Generally, continuing education in a perfect world begins after they have their license. For the people who had to take the education and take the test while they were licensed, it makes sense to have their continuing education start after their first renewal. Otherwise, your making them take the education and pass the test and satisfy the continuing education requirements all within one license cycle. This is something that we have to transition on as well. What were thinking of doing is, the group of people who renew in 2009, it makes sense that their continuing education cycle begins after they first renewed. Everyone else who is already licensed will have to start renewing annually in 2010. Their first continuing education cycle would begin in 2011. Does everyone agree with these concepts? For those who took the education and passed the test while licensed, their continuing education cycle

starts after the first renewal. All of these people will have to take the national portion of the test. For all the people who renew at the end of this year, we are proposing that passing of the national portion of the test would satisfy continuing education requirements for 2009.

37. Brad Groves states that we should put a date on that just as an example of when somebody got licensed. Like I said, take the education and pass the test. If somebody got licensed before education was a requirement, and it was interpreted that now or after meant before to have to take it. They took their education and test while licensed, and that's the biggest group of people right?
38. Cary Whitaker says yes.
39. Brad Groves asks and they have licenses expiring in the near future?
40. Cary Whitaker states 2009, 2010, 2011. We think it's appropriate that their continuing education cycle starts after the first renewal. We have discussed in the past that everyone has to start renewing at the end 2010. So for the people who expire in 2009, they will have to renew at the end of 2009. If we agree conceptually with this, their continuing education cycle starts thereafter. What were proposing is that because they will have to take the national portion of the test, that would satisfy their continuing education requirements for 2010.
41. Brad Groves asks if they expire in 2009, then in 2010, they need to take continuing education but taking the national test satisfies the 2010 education requirement.
42. Cary Whitaker says everyone who expires in 2010 and thereafter would have to renew at the end of 2010 and start taking continuing education in 2011. People who have to renew in 2009, taking the national portion of the exam would satisfy the continuing education requirement for 2010. Their continuing education cycle would really being with everyone else in 2011.
43. Bill Kidwell asks if that aspect would require approval from the registry.
44. Cary Whitaker states that the registry proposed that. It was their idea. That's what we are proposing, is everyone on board with that?
45. General consensus from the Task Force.
46. Cary Whitaker states that we have more than a handful of rules on the horizon. Those include defining the renewal process, transitioning from three year license cycle to annual, education transition, fingerprint transition, we have to address financial responsibility. I think we can do that by way of a position statement as opposed to a rule. We also the processes we talked about today including nullifying revocation and preliminary advisories.
47. Bart Bartholomew asks about the people who hold dual licenses. Will the Division accept them during that 90 day period? Since they can't renew technically, thirty days prior.
48. Cary Whitaker states what we proposed a couple meetings ago was anyone who had a license expiring at any point in 2009 would have their license expire December 31 of 2009. Anyone having

a license expire in any point of 2010 would have their license expire on December 31, 2010. If they had passed all six laws in 2006m it wouldn't be this complicated. Any other rules you would like to address moving forward? Since this is our last meeting, these issues would be discussed in next years meeting. None... If there are no other topics, I would like to thank all of you for taking time out of your busy schedules to participate. We will now open it up to the public for comments.

Action Items: Begin drafting transition rules

Person Responsible: Cary Whitaker

Timeline: ASAP

10:50 - 11:00 a.m.	Public Commentary - Public to limit comments to five (5) minutes.	Cary Whitaker
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Public Attendees: Terry Jones, President of CMLA; Wayne Vaden, Vaden Law Firm; Doug Braden, Former CAMB President

Public Comments:

Terry Jones, President of CMLA: A couple of comments. On the preliminary advisory, I would like the Division to take into account that if the names of the individuals along with the decision were published, the one I think that would be of more concern, if the Division were to publish a persons name saying they had passed the preliminary review, that could give the consumer checking up on that name a false impression. Even though they may be eligible to be licensed, if they are practicing and are not licensed, that would be a violation unless they are working for an exempt entity. That could give the public a false impression in regards to someone's ability to conduct business. I really think its important in dealing with the word revocation, in the past it could have a very broad meaning, I would encourage the Division to limit revocation to pretty much those things that prevent a person from getting a license in the first place, such as criminal convictions or those types of things. It would make sense to have a secondary category, not named revocation, for administrative actions. Certainly the sanctions in those types of situations could warrant suspension for a period time. Again, I think that we should be very careful about using the word revocation. That concludes my comments.

Cary Whitaker: As far as giving the wrong impression, I could certainly disclose that these are not actual licenses. The preliminary advisory's purpose is to help offset costs, not necessarily public censure. As far as limiting revocations to what people can be denied for, we need to be careful with this because if someone is unlicensed, they shouldn't be doing things that can warrant revocation, i.e. misrepresentation of closing costs or interest rates or deceptive advertising. That's conduct that isn't really applicable to applicants unless they have been violating the law. I understand what you are getting at but it needs to be broader than the reasons for denial. Any other public comments?

Wayne Vaden, Vaden Law Firm:

There are a couple of things. Number one, the public information. I'm of the opinion that it should be positive in nature. If you do put out there those folks who have been denied a license, it does put a taint on even applying for a license. If you put the criminal information out there, it will have a chilling effect on those who really want to get into the industry. If you make it more of a positive situation where consumers go there and they can actually see if their broker is licensed and certified with the state, I think it would encourage folks to comply and apply for a license with the DRE. One of the problems is that we have unlicensed brokers out there and I can see a situation where someone will go to their mortgage broker and the broker will tell them I am exempt from licensing requirements. Consumers don't know what exempt means. If they look at the exemption categories, it's easy for someone to say "I'm with a bank." The second piece was with regard to the fingerprinting requirement. I know that CBI flags for arrest but we know that the statutory language says convictions of felonies. I would caution you to be careful about calling licensed brokers when they are arrested and looking into those arrests. To me that strikes a nerve as far as privacy issues, especially if you can only regulate convictions. Lastly, I applaud you for the nullification of the revocation process, but we have to look at the process by which a mortgage broker actually goes through to get that revocation nullified. I think that is a very important part of this. It should actually allow them some notice an opportunity to be heard and a chance to present evidence. The last part of that, with regard to a licensed broker who does not do a proper disclosure. I still would like, instead of going through the revocation process and not allowing them to participate in the nullification process, Id like it to be expanded so that you actually have a mortgage broker who may not have been in compliance, where you can now say,

this is what is expected of you, we expect you to clean up any old situations you may have. We will regulate them very strictly but allow them to continue their business and allow them to be included in the nullification process.

Cary Whitaker: Thank you.

Doug Braden, Former CAMB President

It's a good idea to have the nullification process in place. As Bart mentioned, you have some people with dual licensure. If that real estate agent wants to originate FHA loans and surrenders his real estate license, the surrendering of that license may put him in a revoked status for real estate. Just by him surrendering his license, he may have just put himself out of the industry because that comes off as a revocation.

Cary Whitaker: If they are compliant, they can just inactivate their license. That's not formal discipline. Generally, when a person surrenders their license, it's because the Director, or the Commission, or the Board is seeking disciplinary action and they prefer to take that option. So, if someone wants to do FHA loans, and they have a real estate broker license, they just need to inactivate that license. When they decide to go back to their real estate brokering activities, they would just have to be compliant at that time. Any other comments?

No more public comments.