



# **20 Hour CA-BO SAFE Comprehensive: Financing Residential Real Estate**

## **COURSE MANUAL Part 3**

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- Secure and Fair Enforcement for Mortgage Licensing Act – SAFE
- Home Mortgage Disclosure Act-HMDA
- Fair Credit Reporting Act – FCRA
- Fair and Accurate Credit Transactions Act – FACTA
- Privacy Protection/Do Not Call
- Gramm-Leach-Bliley Act - GLBA
- Mortgage Assistance Relief Services Rule - MARS
- Bank Secrecy Act

### **S.A.F.E. Licensing and Registration Rules**

The Housing and Economic Recovery Act (HERA) of 2008, addresses the mortgage crisis by including the Secure and Fair Enforcement for Mortgage Licensing Act - S.A.F.E. or SAFE Act. Under the SAFE Act, individual employees of Agency-regulated institutions must register with the Federal Registry.

The Dodd-Frank Act transferred the authority to develop and maintain the Federal Registry from the Agencies to the CFPB. The SAFE Act statute requires individual mortgage loan originators employed by "Agency-regulated" institutions to be registered with the Nationwide Mortgage Licensing System and Registry, a Federal Registry.

*This is a database established previously by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators to support the licensing of mortgage loan originators by the States.*

Under SAFE Act, an originator is an individual who:

- Takes a residential loan application, and
- Offers or negotiates terms of a residential mortgage loan for compensation or gain

This definition will not include:

- An individual who performs only administrative or clerical tasks
- Certain individuals who perform real estate brokerage activities
- Individuals who are involved in the extension of credit related solely to time share plans

The SAFE Act is designed to prevent abusive, predatory practices during loan origination and has these provisions for originators:

- Register with the Registry and maintain their registration.
- Obtain a unique identifier through the Registry that will remain with that originator, regardless of employment changes. Mortgage loan originators and their employing institutions must provide MLO unique identifiers to consumers.

Agency-regulated institutions must:

- Require their employees who are mortgage loan originators to comply with these requirements.
- Adopt and follow written policies and procedures to assure compliance with the registration requirements.

The SAFE Act requires all loan originators to be either federally registered or state-licensed

- Registered loan originator - employed by depository institution or subsidiary
- State-licensed loan originator - all others must have state license
- Loan Processor or Underwriter – supervised loan processors and underwriters who do not perform any activities of a loan originator are exempt from licensing

- Registration and licensing is required for independent contractors performing clerical, processor, or underwriter duties
  - Independent Contractors - may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless they are registered and licensed

Real estate agents generally exempt from S.A.F.E. licensing rules [SAFE Act 12 USC §5102 (3)(A)(II)(iii)]

- Must have originator's license if compensated by a lender or mortgage broker for helping to arrange a loan [SAFE Act 12 USC §5102 (3)(A)(II)(iii)]

Other S.A.F.E. Provisions

- Uniform license applications and reporting requirements for states SAFE Act 12 USC § [5101 (I)]
- Improved information tracking across state lines (background checks, fingerprinting, etc.) [SAFE Act 12 USC §5101 (4)]
- Enhanced consumer protection and anti-fraud measures [SAFE Act 12 USC §5101 (6)]
- Fiduciary duties for loan originators [SAFE Act 12 USC §5101 (8)]

### Originator's Fiduciary Duties

- Traditionally, mortgage broker:
  - Wasn't buyer's agent
  - Did not have duty to help buyer choose best financing option or to act in buyer's best interests
- Some states have laws giving mortgage brokers fiduciary duties to buyers [SAFE Act 12 USC §5101 (8)]
- S.A.F.E. now imposes fiduciary duties as a matter of federal law in some states
- *Fiduciary means a legal or ethical relationship of trust between two or more parties*

### Home Mortgage Disclosure Act-HMDA

The Home Mortgage Disclosure Act, or HMDA, helps government spot redlining and predatory lending.

HMDA applies to:

- Financial institutions - [Regulation C, 12 CFR §203.2 (e)(1)(i)(ii)(iii)(iv)(A)(B)(C)]
- For-profit mortgage lending institutions [Regulation C, 12 CFR §203.2 (i)(ii)(iii)(A)(B)]

Lenders must submit an annual report to government on residential mortgage loans

HMDA has as its purpose:

*"This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used [Regulation C, 12 CFR §203.1 (b)(1)]:*

- To help determine whether financial institutions are serving the housing needs of their communities [Regulation C, 12 CFR §203.1 (b)(1)(i)]
- To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed [Regulation C, 12 CFR §203.1 (b)(1)(ii)]
- To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. [Regulation C, 12 CFR §203.1 (b)(1)(iii)]

*Neither this act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.*

Financial institutions includes banks, savings associations, or credit unions: [Regulation C, 12 CFR §203.2 (e)(1)]

- On preceding Dec. 31 had assets in excess of threshold set forth by the Board [Regulation C, 12 CFR §203.2 (e)(1)(ii)]
- On preceding Dec. 31, had a home or branch in a metropolitan area [Regulation C, 12 CFR §203.2 (e)(1)(ii)]
- In the preceding calendar year, originated at least one purchase or refinance loan [Regulation C, 12 CFR §203.2 (e)(1)(iii)]

Financial institutions meets one or more of the following:

- Institution is federally insured [Regulation C, 12 CFR §203.2 (e)(1)(iv)(A)]
- Mortgage loan was insured, guaranteed or supplemented by a federal agency [Regulation C, 12 CFR §203.2 (e)(1)(B)]
- The mortgage loan was intended for sale to FNMA or Freddie Mac [Regulation C, 12 CFR §203.2 (e)(1)(C)]

For-profit mortgage lending institution:

In previous calendar year, either: [Regulation C, 12 CFR §1003.2]

- Banks, savings associations, or credit unions will not be subject to Regulation C and will not be covered by HMDA unless the institution originates at least 25 home purchase loans in the previous two years
  - To determine if the institution is covered by Regulation C the institution must have originated at least:
    - 25 closed-end mortgage loans in each of the two preceding calendar years, or
    - 500 open-end lines of credit in each of the two preceding calendar years

If the institution meets these two tests, the institution is subject to new HMDA requirements. All covered loans will be included in the coverage test. These will include home equity loans, home improvement loans, purchase loans, refinance loans, etc...

The Lender must also provide data for, and originations and purchases in each calendar year on, the following: [Regulation C, 12 CFR §203.4 (a)]

- Home purchase loans
- Home improvement loans
- Refinances

Data must be collected on requests under a preapproval program [Regulation C, 12 CFR §203.4 (a)].

A request for preapproval is an application if a written commitment is issued to the applicant. [Regulation C, 12 CFR §203.2 (b)(2)]

The Lender must also provide data for, and originations and purchases in each calendar year on, the following: [Regulation C, 12 CFR §203.4 (a)]

- A loan identification number [Regulation C, 12 CFR §203.4 (b)(1)]
- The type of loan or application [Regulation C, 12 CFR §203.4 (b)(2)]
- The purpose of the loan [Regulation C, 12 CFR §203.4 (b)(3)]
- Reason for request and results [Regulation C, 12 CFR §203.4 (b)(4)]
- Property type [Regulation C, 12 CFR §203.4 (b)(5)]
- Occupancy status [Regulation C, 12 CFR §203.4 (b)(6)]
- Amount of loan [Regulation C, 12 CFR §203.4 (b)(7)]

The Lender must also provide data for, and originations and purchases in each calendar year on, the following: [continued]

- Action taken and date [Regulation C, 12 CFR §203.4 (b)(8)]
- Location of property [Regulation C, 12 CFR §203.4 (b)(9)]
- Ethnicity, race and sex of applicant [Regulation C, 12 CFR §203.4 (b)(10)]
- Entity purchasing loan [Regulation C, 12 CFR §203.4 (b)(11)]
- Difference between loan's APR and the yield on Treasury securities [Regulation C, 12 CFR §203.4 (b)(12)]

This information allows the federal government to:

- Monitor lending patterns and analyze them for any evidence of illegal discrimination [Regulation C, 12 CFR §203.1 (b)(1)(iii)]

This information is collected on a Home Mortgage Disclosure Act report or HMDA report.

Depository and non-depository institutions that meet certain reporting criteria must complete a HMDA Loan Application Register (LAR) [Appendix A to Part 203].

- The LAR contains information from applications for home purchases, refinances, and home improvement loans [Regulation C, 12 CFR §203.4 (a)]
- Data submitted on the HMDA Loan Application Register is used by the Federal Financial Institutions Examination Council (FFIEC) [Regulation C, 12 CFR §203.5 (b)(1)] to create reports for each metropolitan area, also known as, MA>
- These reports are available to the public at central data depositories located in each metropolitan area [Regulation C, 12 CFR §203.5 (b)(2)]

To comply with HMDA:

- First determine if the loan fits into one of the previously listed categories
- If the loan is HMDA reportable, government monitoring information on the loan application must be read or shown to the applicants [Appendix B to Part 203 – II A, B, C, and D]
- If they choose not to disclose the information, the mortgage loan officer must make a visual observation

If a telephone, mail, or internet application takes place [Appendix A to Part 203 – I D 2]:

- The mortgage loan officer is still required to determine if HMDA applies
- You must ask the applicant for this information, but you cannot require the applicant to provide it
- Inform applicant, reason for information is to prohibit discrimination

If applicant declines to provide information, the data need not be provided

- If this is the case, indicate how application received
- Mail, telephone or Internet

## **Fair Credit Reporting Act – FCRA**

The following is the Fair Credit Reporting Act's purpose: [15 U.S.C. § 1681]

Accuracy and fairness of credit reporting. The Congress makes the following findings:

- The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system.
- An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
- Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
- There is a need to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."

The Fair Credit Reporting Act (FCRA) is enforced by the Federal Trade Commission (FTC) and is designed for two purposes:

- To promote accuracy in consumer reports [15 U.S.C. § 1681] [602 (a)(1)]
- To ensure privacy in consumer reports [15 U.S.C. § 1681] [602 (a)(4)]

The FCRA was established to require Credit Reporting Agencies or CRA's to implement reasonable procedures to meet the needs of: [15 U.S.C. § 1681] [602 (b)]

- The banking system
- Employers
- Credit card agencies

Credit Reporting Agency functions include:

- In response to a court order [15 U.S.C. § 1681b] [604 (a)(1)]
- In accordance with written instructions from the consumer [15 U.S.C. § 1681b] [604 (a)(2)]
- To extend credit [15 U.S.C. § 1681b] [604 (a)(3)(A)]
- For assessment of a potential employee by the employer [15 U.S.C. § 1681b] [604 (a)(3)(B)]
- For investor or servicer of an existing credit obligation [15 U.S.C. § 1681b] [604 (a)(3)(E)]

When ordering a credit report, the lender must:

- Disclose intent and purpose to the borrower [15 U.S.C. § 1681b] [604 (2)(A)(i)]
- Obtain written permission from applicant(s) [15 U.S.C. § 1681b] [604 (2)(A)(ii)]
- Counsel consumer regarding their rights under the FCRA

If the consumer is denied credit: [15 U.S.C. § 1681m] [615 (a)(1)(2)(A)]

- Must receive an adverse action letter which includes, but is not limited to: [15 U.S.C. § 1681m] [615 (a)(1)(2)]
- Identifies the CRA [15 U.S.C. § 1681m] [615 (2)(A)]
- Statement the CRA did not make the adverse decision [15 U.S.C. § 1681m] [615 (2)(B)]
- Informs customer of right to a free report [15 U.S.C. § 1681m] [615 (3)(A)]
- Informs customer of right to dispute the accuracy of the report [15 U.S.C. § 1681m] [615 (3)(B)]

## **Rights of the Consumer**

If there is an error on a consumer's report, the consumer has the right to ask Bureau to make a correction: [15 U.S.C. § 1681i] [611 (a)(1)(A)]

- Must do so in writing
- Also send a similar letter to creditor
- Credit reporting agency will contact provider
- Provider must investigate
- Review the supporting data
- Report results to CRA

## **The Fair Isaac Company Score – FICO**

- FICO is a measure of credit risk using a numerical system; a high credit score would offer better loan opportunities for the consumer. According to the Fair Isaac Company website ([www.myfico.com/credit-education/whats-in-your-credit-score/](http://www.myfico.com/credit-education/whats-in-your-credit-score/)), scores are measured as follows:
- 35% - Payment history - Bills paid on time will warrant a better FICO score
- 30% - Outstanding debt - More debt on credit cards could mean a lower FICO
- 15% - Length of credit record - Longer history of different types of debt will improve FICO score
- 10% - Inquiries - Applying for too many credit cards or loans can impair the FICO score
- 10% - Types of credit - History of managing different types of debts can be a benefit

## **Fair Credit Reporting Act – FCRA (15 U.S.C. § 1681): Credit Reporting Agencies**

There are three Major Reporting Agencies:

- Experian
- TransUnion
- Equifax

*Information is voluntary*

*CRA's (Credit Reporting Agencies) play a vital role in the consumer credit profile*

## **Credit Report**

The Fair Isaac Corporation states to consumers on their website that credit reports are divided into the following sections ([www.myfico.com/crediteducation/in-your-credit-report.aspx](http://www.myfico.com/crediteducation/in-your-credit-report.aspx)):

- Personal information or identifying information
  - *Name, date of birth, current address, previous address and employer details*
- Account History or trade lines
  - *Real estate, installment loans, credit cards, collection accounts, others*
- Public Information
  - *Bankruptcies, judgments, tax liens, foreclosures, garnishments*
- Inquiries
  - *Made by lenders or creditors*
    - *Soft inquiry - made by lenders to check a consumer's profile*
      - *No impact on credit score*
    - *Hard inquiry - based on a consumer's loan application*
      - *Will impact credit score*

## **Fair Credit Reporting Act – FCRA (Amendments)**

### **Fair and Accurate Credit Transactions Act of 2003 – [Public Law 108-159, 108th Congress]**

FACTA has as its statement:

*To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.*

- Allows consumers to request and obtain a free credit report every 12 months from each credit reporting agency (Equifax, Experian, and TransUnion)  
[211 (a)(1)(A)]
- Also contains revisions to reduce identity theft [112 (a)(1)(A)(B)(2)(A)(B)]

The Red Flags Rule requires businesses to implement a written Identity Theft Prevention Program to warn them of or "red flag" identity fraud.

Red Flag Rules [114 (1)(A)(B)(C)(i)(ii)(iii)(2)(A)(B)(3)]

- Require agencies to create regulation regarding identity theft prevention
  - Identity Theft Prevention Program
  - Notices of Address Discrepancies
  - Assess validity of a change of address
  - Provide Credit Disclosure Notice

### **Privacy Protection/Do Not Call**

In answer to many complaints received from consumers regarding telemarketers, the Federal Communications Commission (FCC), created the Do-Not-Call Registry. The Federal Trade Commission (FTC) mandates the National Do Not Call Registry. Once the consumer registers their phone number on this registry, telemarketers must stop making calls to that number within 31 days. Telephone numbers on the registry will remain on it permanently and will only be removed if the phone line registered is disconnected and reassigned, or if the consumer decides to remove a number from the registry.

The registry does not cover:

- Calls from political organizations, charities, and people conducting surveys
- Calls from companies wherein the consumer has an existing business relationship.
- A company can call up to 18 months after a purchase has been made by the consumer or for three months after an inquiry is made or an application has been submitted.
- Calls from companies in which the consumer has given the company permission to call them

### **Privacy Rules – Gramm-Leach-Bliley Act (GLBA)**

The GLBA is composed of two parts:

- The Privacy Rule (Title 16 CFR 313)
- The Safeguards Rule (Title 16 CFR 314)

GLBA requires financial institutions to ensure the security and confidentiality of consumer's personal information. [GLBA, Title 16, §314.1 (b)]

- Name
- Address
- Phone Number
- Income
- Bank account numbers
- Credit card numbers
- Credit History
- Social Security number

The Federal Trade Commission (FTC) implemented the GLB Act and issued the Safeguards Rule requiring financial institutions to have measures in place to keep their customer information secure.

*Definition of financial institution: Any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act*

(Title 12 USC §1843(k) and § 6809 (3)(A))

Under the Final Rule promulgated by the Federal Trade Commission (FTC), an institution must be *significantly engaged* in financial activities to be considered a "financial institution." These entities would include:

- Check-cashing businesses
- Pay-day lender
- Mortgage brokers
- Non-bank lenders
- Credit counseling service and other financial advisors
- Retailer that issues its own credit card
- Auto dealers that lease and/or finance

- Collection agency services
- Relocation service that assists individuals with financing for moving expenses and/or mortgages
- Sale of money orders, savings bonds, or traveler's checks
- Real estate appraisers

To be in compliance a company must develop a written information security plan describing their customer information protection programs each company must: [GLBA, Title 16, 314.3 (a) and 314.4(a)(b)(1)(2)(3)(c)(d)(1)(2)e]

- Designate one or more employees to coordinate its information security program
- Identify and assess the risks to customer information in each relevant area of the company's operation, and evaluate the effectiveness of the current safeguards for controlling these risks
- Design and implement a safeguards program, and regularly monitor and test it
- Select service providers that can maintain appropriate safeguards, make sure your contract requires them to maintain safeguards, and oversee their handling of customer information
- Evaluate and adjust the program in light of relevant circumstances, including changes in the firm's business or operations, or the results of security testing and monitoring

### **Gramm-Leach-Bliley Act – History**

The Glass-Steagall Act was formed in 1933 as a result of the financial failures due to the Great Depression. This act prohibited national and state banks from any affiliation with securities companies. In the mid -fifties, Congress passed the Bank Holding Company Act, this prohibited a bank from controlling a non-bank company; it was amended in 1982 forbidding banks from conducting general insurance underwriting or agency activities.

The Glass-Steagall Act was gradually undermined and eventually repealed in 1999 by the Financial Services Modernization Act, also called the Gramm-Leach-Bliley Act (GLBA). It is now legal for holding company to have a bank, securities firm, and insurance company as subsidiaries.

*With these mergers came privacy risks; some banks began selling consumer information with adverse consequences. Needless to say, the consumers were concerned with how well they were protected against the sharing of their personal information.*

*Privacy protection under the Gramm-Leach-Bliley Act (GLBA) requires financial institutions to develop measures to protect the consumer's records and information*

*Note: The GLBA requires financial institutions to protect information collected from individuals, this does not include business or commercial activities.*

The GLBA permits the disclosure of consumer's information to credit reporting agencies, financial regulatory agencies, as part of the sale of a business, to comply with any other laws or regulations, or as necessary for a transaction requested by the consumer.

The consumer must be provided with: [GLBA, 15 USC §6803(a)(1)(2)(3)(b)(c)(1)(A)(B)(2)(3)(4)]

- An initial (or "short-form") notice about the availability of the privacy policy if the financial institution shares information outside the permitted exceptions.
  - Privacy notice must be clear, conspicuous and accurate statement of the company's privacy practices.
    - Provide an opt-out notice, with the initial notice or separately, prior to a financial institution sharing nonpublic personal information with nonaffiliated 3<sup>rd</sup> parties.
  - Consumers have the right to say "no" to having their information shared [GLBA, 15 USC §6802 (b)(1)(A)(B)(C)]
    - Provide consumers with a "reasonable opportunity" to opt out
    - If a consumer opt outs of all or certain disclosures, a financial institution must immediately honor that opt-out



## Mortgage Assistance Relief Services Rule – MARS

Here is a segment from a report on FTC.org regarding The Mortgage Assistance Relief Services Rule (MAR)s and a ban on the collection of up-front fees:

*"As of January 31, 2011, companies that offer to help homeowners get their loans modified or sell them other types of mortgage assistance relief services are no longer allowed to charge up-front fees. Under the rule, a mortgage assistance relief company may not collect a fee until the consumer has signed a written agreement with the lender that includes the relief obtained by the company. When the company presents the consumer with that relief, it must inform the consumer, in writing, that the consumer can reject the offer without obligation and, if the consumer accepts, the total fee due. Before the consumer agrees to accept the mortgage relief, the company must also provide a written notice from the lender or servicer showing how the relief will change the terms of the consumer's loan (including any limitations on a trial loan modification)."*

In this same report, FTC Chairman Jon Leibowitz had this to say:

*"Banning the collection of up-front fees will protect homeowners from being victimized. This is especially important at a time when so many people are behind on their mortgages or facing foreclosure."*

If applicant declines to provide information, the data need not be provided

- If this is the case, indicate how application received
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The Mortgage Assistance Relief Services program (MARS) has the following perimeters:

FTC rule banning providers of mortgage foreclosure rescue and loan modifications from:

- Collecting fees until homeowners have a written offer the homeowner decides is acceptable [Regulation 0, 12 CFR 1015.5 (a)]

Highlights of MARS

The following information must be clearly and prominently disclosed upfront: [Regulation 0, 12 CFR 1015.3(a)(b)(1)(2)(3)(i-vi)(2)(d)(1)(2)]

- The total cost
- That they can stop using services at any time
- There is no association with government or lender
- Homeowner's lender may not agree to change terms of their mortgage
- Homeowner should not be advised to stop communicating with their lender
- No advance fees until homeowner has an offer in writing that is acceptable
- Homeowner has right to reject offer
- And no fee will be charged

Various disclosures included in initial contact and throughout process: [Regulation O, 12 CFR 1015.2(a) and 1015.5(a)(b)(c)(1)(i-vii)(2)(d)(1)(2)]

- Must be in writing
- Designed to protect the homeowner
- Must describe all material differences between the terms of the offer and the customer's current lender
- Homeowner has the right to stop doing business with the provider at any time
- No fee will be involved
- False or misleading claims are prohibited in advertising or communication about services or performance
- If homeowner is advised not to pay their mortgage, homeowner must be informed that this may damage their credit rating
- And they could lose their home

### **Bank Secrecy Act/Anti-Money Laundering - (BSA/AML)**

*FDIC Law, Regulations, Related Acts - 8000-Miscellaneous Statutes and Regulations, Title 31-Money and Finance, Subtitle IV - Money, Chapter 5-Monetary Transactions, Subchapter II-Records on Monetary Instruments Transactions*

The Bank Secrecy Act, also known as the Anti-Money Laundering Act, requires financial institutions to assist U.S. government agencies to detect and prevent money laundering.

The FDIC has this definition for money laundering: Money Laundering involves transactions intended to disguise the true source of funds; disguise the ultimate disposition of the funds; eliminate any audit trail and make it appear as though the funds came through legitimate sources; and evade income taxes.

Financial institutions must:

- Keep records of cash purchases of negotiable instruments [Title 31, CFR, Subpart C §1010.310]
- File reports of cash purchases exceeding \$10,000 a day [Title 31, CFR, Subpart C §1010.311 and §1010.410 (all), Subpart D §1020.310]
- Report suspicious activity that might signify money laundering, tax evasion, or other criminal activities [Title 31, CFR, Subpart C §1010.320 and Subpart C, §1012.320 (a)(1)(b)(1)(2)(i)(ii)(iii)(b)(1)(2)(3)]

Types of transactions affected:

- A Currency Transaction Report (CTR) must be used to report cash transactions in excess of \$10,000 during the same business day. An amount over \$10,000 can be either in one transaction or a combination thereof. [Title 31, CFR, Subpart C §1010.310 through §1010.314 and §1010.330 (all)]  
NOTE: Authorities are usually not concerned with one CTR being filed for a consumer's account; although multiple CTR's from different institutions suggest suspicious activity.
- The Monetary Instrument Log (MIL) must indicate cash purchases of monetary instruments in value totaling \$3,000 - \$10,000, such as: [Title 31, CFR, Subpart D §1010.415 (all)]
  - Money orders
  - Cashier's checks
  - Traveler's checks
    - The MIL is required to be kept on record at the financial institution and readily available for an examiner's review
- The Suspicious Activity Report (SAR) will report any cash transaction where the customer appears to be avoiding the Bank Secrecy Act (BSA) reporting. The SAR is also used if the customer's actions suggest they are: [Title 31, CFR, Subpart C §1010.320 and Subpart C, §1012.320 (a) (1)(b)(1)(2)(i)(ii)(iii)(b)(1)(2)(3)]
  - Laundering money
  - Violating federal criminal laws
  - Committing wire transfer fraud
  - Committing check fraud
  - Involved in mysterious disappearances

NOTE: The customer is not to have knowledge of the SAR being filed.

### **LESSON SUMMARY**

**S.A.F.E. Licensing and Registration Rules:** The Housing and Economic Recovery Act (HERA) of 2008, addresses the mortgage crisis by including the Secure and Fair Enforcement for Mortgage Licensing Act - S.A.F.E. or SAFE Act. Under the SAFE Act, individual employees of Agency-regulated institutions must register with the Federal Registry

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  - Does NOT include:
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    - Persons who perform real estate brokerage activities
    - Individuals providing credit to time-share plans
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  - The SAFE Act is designed to prevent abusive, predatory practices during loan origination and has these provisions for originators:
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- Originator's Fiduciary Duties
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  - For-profit mortgage lending institutions
  - Lenders must submit an annual report to government on residential mortgage loans
- Purpose
  - To provide the public with loan data that can be used
    - To help determine whether financial institutions are serving the housing needs of their communities
    - To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed
    - To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

- Who it affects
  - Financial institutions include banks, savings associations, or credit unions that:
    - On preceding Dec. 31 had assets in excess of threshold set forth by the Board
    - On preceding Dec. 31, had a home or branch in a metropolitan area
    - In the preceding calendar year, originated at least one purchase or refinance loan
  - Financial institutions meet one or more of the following:
    - Institution is federally insured
    - Mortgage loan was insured, guaranteed or supplemented by a federal agency
    - The mortgage loan was intended for sale to FNMA or Freddie Mac
  - For profit mortgage lending institution:
    - In previous calendar year, either:
      - Originated home loans that equal 10% of its loan origination volume
      - Originated home purchase loans that equaled at \$25 million
    - Either:
      - On the preceding Dec. 31 had total assets of more than 10 million
      - In the preceding year originated at least 100 purchase loans
- Other provisions
  - The Lender must also provide data for, and originations and purchases in each calendar year on, the following:
    - Home purchase loans
    - Home improvement loans
    - Refinances
  - Data must be collected on requests under a preapproval program
  - A request for preapproval is an application if a written commitment is issued to the applicant.
  - The Lender must also provide data for, and originations and purchases in each calendar year on, the following:
    - A loan identification number
    - The type of loan or application
    - The purpose of the loan
    - Reason for request and results
    - Property type
    - Occupancy status
    - Amount of loan
    - Action taken and date
    - Location of property
    - Ethnicity, race and sex of applicant
    - Entity purchasing loan
    - Difference between loan's APR and the yield on Treasury securities
- HMDA Report
  - This information is collected on a Home Mortgage Disclosure Act report or HMDA report. Depository and non-depository institutions that meet certain reporting criteria must complete a HMDA Loan Application Register (LAR)
  - The LAR contains information from applications for home purchases, refinances, and home improvement loans
  - Data submitted on the HMDA Loan Application Register is used by the Federal Financial Institutions Examination Council
  - These reports are available to the public at central data depositories located in each metropolitan area
- HMDA Compliance
  - Determine if the loan fits into one of the listed categories
    - If the loan is HMDA reportable, government monitoring information on the loan application must be read or shown to the applicants
    - If they choose not to disclose the information, the mortgage loan officer must make a visual observation
  - If a telephone, mail, or internet application takes place
    - The mortgage loan officer is still required to determine if HMDA applies
    - You must ask the applicant for this information, but you cannot require the applicant to provide it
    - Inform applicant, reason for information is to prohibit discrimination
    - If applicant declines to provide information, the data need not be provided. If this is the case, indicate how application received Mail, telephone or Internet

## Fair Credit Reporting Act - FCRA

- Purpose of FCRA
  - Accuracy and fairness of credit reporting. The Congress makes the following findings:
    - The banking system is dependent upon fair and accurate credit reporting.
    - An elaborate mechanism has been developed for investigating and evaluating the credit worthiness
    - Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit
    - Insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.
  - The Fair Credit Reporting Act (FCRA) is enforced by the Federal Trade Commission (FTC) and is designed to:
  - To promote accuracy and privacy in consumer reports
  - The FCRA was established to require Credit Reporting Agencies or CRA's to implement reasonable procedures to meet the needs of: The banking system, Employers, Credit card agencies
- Functions
  - Credit Reporting Agency functions include:
    - In response to a court order
    - In accordance with written instructions from the consumer
    - To extend credit
    - For assessment of a potential employee by the employer
    - For investor or servicer of an existing credit obligation
- Provisions
  - When ordering a credit report, the lender must:
    - Disclose intent and purpose to the borrower
    - Obtain written permission from applicant(s)
    - Counsel consumer regarding their rights under the FCRA
  - If the consumer is denied credit:
    - Must receive an adverse action letter which includes, but is not limited to:
      - Identifies the CRA
      - Statement the CRA did not make the adverse decision
      - Informs customer of right to a free report
      - Informs customer of right to dispute the accuracy of the report
- Consumer Rights
  - If there is an error on a consumer's report, the consumer has the right to ask Bureau to make a correction:
    - Must do so in writing and send a similar letter to creditor
    - Credit reporting agency will contact provider
    - Provider must investigate
    - Review the supporting data
    - Report results to CRA
- FICO Score
  - The Fair Isaac Company Score – FICO – is a measure of credit risk using a numerical system; a high credit score would offer better loan opportunities for the consumer.
    - 35% - Payment history - Bills paid on time will warrant a better FICO score
    - 30% - Outstanding debt - More debt on credit cards could mean a lower FICO
    - 15% - Length of credit record - Longer history of different types of debt will improve FICO score
    - 10% - Inquiries - Applying for too many credit cards or loans can impair the FICO score
    - 10% - Types of credit - History of managing different types of debts can be a benefit
- Credit Reporting Agencies
  - There are three Major Reporting Agencies:
    - Experian, TransUnion & Equifax
  - Information is voluntary
  - CRA's (Credit Reporting Agencies) play a vital role in the consumer credit profile
- Credit report
  - Divided into these sections:
    - Personal information
    - Account History
    - Public Information
    - Inquiries

## **Fair and Accurate Credit Transactions Act - FACTA**

- Purpose: To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.
  - Allows consumers to request and obtain a free credit report every 12 months from each credit reporting agency (Equifax, Experian, and TransUnion)
  - Also contains revisions to reduce identity theft
- Red Flag Rules
  - Require agencies to create regulation regarding identity theft prevention
    - Identity Theft Prevention Program
    - Notices of Address Discrepancies
    - Assess validity of a change of address
    - Provide Credit Disclosure Notice

## **Privacy Protection/Do Not Call**

- Purpose: In answer to many complaints received from consumers regarding telemarketers, the Federal Communications Commission (FCC), created the Do-Not-Call Registry. The Federal Trade Commission (FTC) mandates the National Do Not Call Registry. Once the consumer registers their phone number on this registry, telemarketers must stop making calls to that number within 31 days. Telephone numbers on the registry will remain on it permanently and will only be removed if the phone line registered is disconnected and reassigned, or if the consumer decides to remove a number from the registry.
- Exemptions
  - The registry does not cover:
    - Calls from political organizations, charities, and people conducting surveys
    - Calls from companies wherein the consumer has an existing business relationship.
    - A company can call up to 18 months after a purchase has been made by the consumer or for three months after an inquiry is made or an application has been submitted.
    - Calls from companies in which the consumer has given the company permission to call them

## **Gramm-Leach-Bliley Act**

- The GLBA is composed of two parts:
  - The Privacy Rule (16 CFR 313)
  - The Safeguards Rule (16 CFR 314)
- Privacy Rules
  - GLBA requires financial institutions to ensure the security and confidentiality of consumer's personal information.
    - Name
    - Address
    - Phone Number
    - Income
    - Bank account numbers
    - Credit card numbers
    - Credit History
    - Social Security number
  - The Federal Trade Commission (FTC) implemented the GLB Act and issued the Safeguards Rule requiring financial institutions to have measures in place to keep their customer information secure.
  - Under the Final Rule promulgated by the Federal Trade Commission (FTC), an institution must be significantly engaged in financial activities to be considered a "financial institution." These entities would include:
    - Check-cashing businesses
    - Pay-day lender
    - Mortgage brokers
    - Non-bank lenders
    - Credit counseling service and other financial advisors
    - Retailer that issues its own credit card
    - Auto dealers that lease and/or finance
    - Collection agency services
    - Relocation services
    - Sale of money orders, savings bonds, or traveler checks
    - Real estate appraisers

- To be in compliance a company must develop a written information security plan:
  - Designate one or more employees to coordinate its information security program
  - Identify and assess the risks to customer information in each relevant area of the company's operation
  - Design, implement and maintain a safeguards program
  - Select service providers that can maintain appropriate safeguards
  - Evaluate and adjust the program in light of relevant circumstances
- Disclosures
  - The GLBA permits the disclosure of consumer's information to credit reporting agencies, financial regulatory agencies, as part of the sale of a business, to comply with any other laws or regulations, or as necessary for a transaction requested by the consumer.
  - The consumer must be provided with:
    - An initial (or "short-form") notice about the availability of the privacy policy if the financial institution shares information outside the permitted exceptions.
      - Privacy notice must be clear, conspicuous and accurate statement of the company's privacy practices.
      - Provide an opt-out notice, with the initial notice or separately, prior to a financial institution sharing non-public personal information with nonaffiliated 3rd parties.
    - Consumers have the right to say "no" to having their information shared
      - Provide consumers with a "reasonable opportunity" to opt out
      - If a consumer opt outs of all or certain disclosures, a financial institution must immediately honor that opt-out

### **Mortgage Assistance Relief Services Rule - MARS**

- The Mortgage Assistance Relief Services program (MARS) includes the FTC rule banning providers of mortgage foreclosure rescue and loan modifications from collecting fees until homeowners have an acceptable written offer.
  - FTC Chairman Jon Leibowitz stated:
 

"Banning the collection of up-front fees will protect homeowners from being victimized. This is especially important at a time when so many people are behind on their mortgages or facing foreclosure."
- Provisions
  - The following information must be clearly and prominently disclosed upfront:
    - The total cost
    - That they can stop using services at any time
    - There is no association with government or lender
    - Homeowner's lender may not agree to change terms of their mortgage
    - Homeowner should not be advised to stop communicating with their lender
    - No advance fees until homeowner has an offer in writing that is acceptable
    - Homeowner has right to reject offer and no fee will be charged
    - Must be in writing
    - Designed to protect the homeowner
    - Must describe all material differences between the terms of the offer and the customer's current lender
    - Homeowner has the right to stop doing business with the provider at any time and no fee will be involved
    - False or misleading claims are prohibited in advertising or communication about services or performance
    - If homeowner is advised not to pay their mortgage, homeowner must be informed that this may damage their credit rating and they could lose their home

### **Bank Secrecy Act/Anti-Money Laundering (BSA/AML)**

- The Bank Secrecy Act, also known as the Anti-Money Laundering Act, requires financial institutions to assist U.S. government agencies to detect and prevent money laundering.
  - The FDIC has this definition for money laundering: Money Laundering involves transactions intended to disguise the true source of funds; disguise the ultimate disposition of the funds; eliminate any audit trail and make it appear as though the funds came through legitimate sources; and evade income taxes.

- Financial institutions must:
  - Keep records of cash purchases of negotiable instruments
  - File reports of cash purchases exceeding \$10,000 a day
  - Report suspicious activity that might signify money laundering, tax evasion, or other criminal activities
- Currency Transaction Report
  - A Currency Transaction Report (CTR) must be used to report cash transactions in excess of \$10,000 during the same business day. An amount over \$10,000 can be either in one transaction or a combination thereof.

NOTE: Authorities are usually not concerned with one CTR being filed for a consumer's account; although multiple CTR's from different institutions suggest suspicious activity.

- Monetary Instrument Log
  - The Monetary Instrument Log (MIL) must indicate cash purchases of monetary instruments in value totaling \$3,000 - \$10,000, such as:
    - Money orders, Cashier's checks, Traveler's checks
    - The MIL is required to be kept on record at the financial institution and readily available for an examiner's review
- Currency Transaction Report
  - The Suspicious Activity Report (SAR) will report any cash transaction where the customer appears to be avoiding the Bank Secrecy Act (BSA) reporting. The SAR is also used if the customer's actions suggest they are:
    - Laundering money
    - Violating federal criminal laws
    - Committing wire transfer fraud
    - Committing check fraud
    - Involved in mysterious disappearances

NOTE: The customer is not to have knowledge of the SAR being filed.





## Ethics Overview

- Ethics and Federal Lending Laws
  - RESPA
  - GRAMM-LEACH-BLILEY
  - TILA
  - ECOA
  - HOEPA
- Ethics in Appraisals
- Fraud in Lending
- Ethical Behavior
- Business Prospecting
- Terms used in the Mortgage Industry

## Ethics

Wikipedia describes **ethics** as: A moral philosophy

Ethics addresses questions about morality

Concepts of:

- Good and evil
- Right and wrong
- Virtue and vice

Albert Schweitzer believed ethics was our concern for good behavior and we should all consider the concept of *The Golden Rule*.

Do Unto Others...

Question should be, had that action been done to me, would it have been acceptable to me? If not, then the action is probably not ethical.

The only thing you will ever control in the mortgage industry is your own reputation.

One of the major reasons for the mortgage industry meltdown can be directly tied to the greed of MLOs.

Nationally speaking, the industry has lost over 400 mortgage companies. There is no substitute for integrity.

In establishing moral guidelines you are responsible to:

- Ensure employees conduct themselves properly
- Make sure every consumer is treated fairly
- Be self-disciplined

Mortgage originators should assist and educate consumers in the home loan process.

*Help them to pursue their homeownership dreams*

There are those in the lending industry who choose not to follow guidelines or laws; fraudulent acts are considered a felony and could result in:

- Payment of fines and/or make financial restitution
- Serve time in prison
- Suspension or loss of professional license
- Have personal property seized

Several Federal lending laws are in place to protect the consumer:

- RESPA: Real Estate Settlement Procedures Act (Regulation X)
- ECOA: Equal Credit Opportunity Act (Regulation B)
- HOEPA: Home Ownership and Equity Protection Act (Regulation Z)
- TILA: Truth in Lending Act (Regulation Z)
- HMDA: Home Mortgage Disclosure Act (Regulation C)

#### **Real Estate Settlement Procedures Act (RESPA) - Regulation X**

- Consumer must receive certain disclosures in a timely manner
- Does not allow kickbacks that increase the cost of settlement services
- This act helps buyers be better shoppers in the home buying process

#### **Equal Credit Opportunity Act (ECOA) - Regulation B**

- Cannot discriminate based on race, color, religion, sex, national origin, disability, handicap, marital status, age, public assistance and familial status

#### **Home Ownership and Equity Protection Act (HOEPA) - Regulation Z**

- Will not allow abusive practices in refinances
- Closed-end home equity loans with high interest rates or high fees

#### **Truth in Lending Act (TILA) - Regulation Z**

- Disclose fees/costs associated with loan in a straightforward method
- Must provide disclosures within permissible time frame with truthful estimates/final figures
- Document must show: Annual Percentage Rate (APR), terms of the loan and total costs to borrower
- Must follow advertising rules

#### **Home Mortgage Disclosure Act (HMDA) - Regulation C**

- Prohibits redlining
- E - Appraisal

#### **Ethics in Appraisals**

**Valuation Independence Rule** [12 CFR 1026.42]- This rule applies to covered persons, including appraisers, mortgage brokers, title insurers, and real estate agents. The rule was created with the following purpose:

- Prohibit coercion and similar actions designed to cause persons who perform property valuations (appraisals) to base the appraised value of properties on factors other than independent judgment
- Prohibit persons who perform valuations and valuation management companies hired by lenders from having financial interest in the properties or the credit transactions
- Prohibit creditors from extending credit based on a valuation if the creditor has prior knowledge of any violations involving coercion or conflicts of interest
- Requires creditors or settlement service providers to file reports if they have knowledge regarding appraiser misconduct
- Requires the payment of a reasonable and customary compensation to appraisers who are not employees of the creditors or the appraisal management companies hired by the creditors.

Accurate appraisal is essential element of loan underwriting

- If property is overvalued, loan amount will be larger than it should be and lender's risk of loss is greater

In 1989, Congress passed Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)

- Provisions prompted states to pass licensing and certification legislation for appraisers

Appraisals used in “federally related” loan transactions must be:

- Prepared by state-licensed or certified appraisers
- In accordance with uniform standards of professional appraisal practice

## **Fraud in Lending**

Fraud is a deception against another person. Shams come in the form of:

- An act
- An expression
- An omission
- A concealment
- A misrepresentation

The FBI lists two type of categories of mortgage fraud:

- Fraud for profit
- Fraud for housing

The FBI report shows the FBI’s interest in mortgage fraud schemes and enforcement measures to locate and convict those responsible for these illegal acts

### **Fraud in Lending: Fraud for Profit**

Involves criminals with intent to deceive

- Individuals who do not intend to pay back loan
- Objective is to inflate the value of property
- Provide false income and credit info
- Remove the equity
- Abandon the home and payments

The fraud could involve:

- Seller
- Buyer
- Loan officer
- Appraiser
- Real estate agent
- Processor
- Underwriter

### **Fraud in Lending: Fraud for Housing**

Borrower is the perpetrator

- Owns home under false pretenses
- Falsifies supporting loan documents

Four categories of Fraud for Housing

- Occupancy
- Cash to close
- Income to qualify
- Appraisal

### **Fraud in Lending: Straw Borrower**

Imposter

- Acts like real borrower
- Allows the use of their name
- Allows the use of their credit history
- Real borrower kept secret to gain loan approval

Used in situations where the actual borrower may:

- Not have the income or credit history

- Not intend to occupy the home as a principal residence
- Not a legal alien
- Not be eligible for a special purpose loan
- Intend to use the property for flipping

### **Fraud in Lending: Identity Theft**

Occurs when a person steals personal info from an individual to use for financial gain

- Can be used on a mortgage loan application
- Used by underhanded spouse to refi to pay off debt
- Spouse may use to finance a secret second life

### **Fraud in Lending: Builder Bailout**

Builder has trouble moving property

- May use a relative to secure fake sale
- Could offer bargains like no money down or a silent second
- Red flags would be if the borrower:
  - Barely qualifies
  - Source of funds is questionable
  - Is affiliated with the builder

### **Flips**

Consists of property being purchased at an inflated appraised value

- Purpose to obtain a larger loan and skim the equity off of the property
- Mislead a buyer into thinking home is worth more
- Appraiser inflates the value
- Borrowers have negative equity

### **Loan Application Fraud**

Certain sections to search for fraud

- Employment information
- Years on job is consistent with age
- Assets column
- Substantial assets = ample credit
- Home sized for occupants
- Debts listed match credit report
- Property purchased from landlord or employer

Investigate any questionable items

### **Fraud in Lending - Income Fraud**

Verification of Employment (VOE)

- If borrower is related to employer or is employer, further investigation is required
- Investigate W-2
- Lists exact earnings
- Form should be the borrower/employee copy
- A consistent font

Self-employed borrowers

- 25% or more ownership
- Ensure tax returns are signed and dated
- Address or profession is consistent with info on application
- Handwriting or font throughout return is the same
- No evidence of whiteouts
- Check stub should be checked for:
  - Company name and/or employer name is not handwritten
  - Income is listed in exact figures

- Social security number matches information on application documents
- Verify employment information by:
  - Contacting employer via telephone
  - Check telephone book for employer listing
  - Confirm tax returns via form 882

On VOD, be aware of:

- Available cash is not adequate funds to close loan
- Dollar amounts are rounded
- Significant changes in balances in short periods of time
- Borrower's name not listed on account
- Crossed out information
- Fees collected for insufficient funds

### **Fraud in Lending: Sales Contract Fraud**

- Sales agreement should be checked by lender for validity
- Sales agreement should be specific:
  - Borrower different from purchaser
  - Sales price way below market value
  - No realtors involved
  - A second mortgage is shown
- One or more realtors handle transactions

### **Fraud in Lending: Appraisal Fraud**

Appraisal fraud occurs when pressure is placed on appraiser to inflate values.

Sometimes individuals in the real estate industry "convince" the appraiser to embellish a value with promises of:

- Continued appraisal requests
- Cut of the illegal profits

**The Valuation Independence Rule** was implemented in order to further the integrity of real estate appraisals used in closed-end mortgages. Therefore, the rule prohibits coercion, mischaracterization of value, and conflicts of interest.

### **Inflated Appraisals**

- Are used to increase the size of the loan
- Increase the risk of default to the lender
- Make it much more difficult for the borrower to refinance in the future
- Aid in equity stripping and both practices are illegal.

### **Fraud in Lending: Credit Report Fraud**

Credit report is good source for detection of fraud:

- Social security number and all personal information should be consistent with all loan documents
- Items of concern on a credit report:
  - Social Security Number is not valid
  - Employment date is inconsistent
  - Zero balances on all account

### **Fraud in Lending: Quality Control**

Quality control tactics

- Personnel trained to detect and prevent fraud
- Quality control program
- Updates on compliance info
- Document checklist
- Fraud detection practices
- Red flag situations

Freddie Mac has established practices for fraud prevention on their website

- Includes a mortgage screening checklist
- FBI – Financial Crimes Report, details their focus on fraud crimes
- Financial Institution Fraud Unit identifies mortgage fraud as a principal target
- Separate forms for reporting “Origination” and “Servicing” fraud

### **Ethical Behavior – Consumers**

- Should give true and accurate info on application
- Supply supporting docs/exact duplicates

### **Ethical Behavior – Appraisers**

- Give “fair market value”
- Never be persuaded to give fraudulent value

### **Ethical Behavior – Underwriters *should assure that***

- Borrower - Unlikely to default
- Property - has enough value for loan

### **Ethical Behavior – Investors *should avoid***

- Straw Borrowers
- Appraisers who give false values
- Bogus supporting documents

### **Ethical Behavior –Warehouse Lenders *should***

- Maintain a strong screening process
- Fund only legitimate loans
- Control funds from investors

### **Ethical Behavior –Real Estate Licensees**

- Should show honesty regarding buyer/seller
- Do not practice “money under the table”
- Document all items on the Closing Disclosure, which is provided to the borrower.

### **Ethical Behavior –Closing Agent**

- Review documents for loan with borrower
- Ensure all charges are legitimate

### **Ethical Behavior –Employers**

- Provide honest information regarding wages and expenses
- Self-employed borrower should provide accurate supporting documents

### **Ethical Behavior –Employers**

### **National Association of Realtors®**

- Strict code of Ethics & Standards of Practice
- Realtors should keep personal info regarding consumers private

*Example - 2 different relationships in a financed transaction*

- *Real estate agent/buyer*
- *Buyer/lender*

- *Information should only travel between each individual in that particular group*
- Realtors must take steps to ensure the privacy, security and confidentiality of customer files

## **Prospecting for business**

The Holy Grail for mortgage loan officers is truly the consistent supply of qualified prospects.

Until the late 1990's, loan officers were allowed to, and in many settings, also required to cold call on real estate agents. By delivering donuts or daily rate sheets, mortgage loan officers associated with brokers and mortgage companies would garner the attention of realtors. They could pitch their ability to pre-qualify, price, process, and ultimately close loans within the time table established by the agents on their contracts.

Mortgage loan officers employed by the banks rarely made appearances outside of their designated work places. They relied upon the name of the bank to drive business to their desks. This is not uncommon today.

Into the late 1990's many small real estate brokers were integrated into fewer mega-brokers.

Many of the mega brokers opened mortgage broker operations within their realtor's branches. As such, the policies of open competition were discontinued in favor of "one-stop shopping". This restricted the consumer's exposure to open competition for their business and rate shopping.

The one-stop shops still limit mortgage loan officers from calling on agents in their offices. We are currently experiencing a reversal in the trend from mega real estate brokers back to a proliferation of smaller, even boutique, real estate brokerages. The smaller real estate brokers tend to have a better reputation for personalized and customized service to individuals.

Employers of new people in just about every sales position begin by asking them to put a list together of names from family and friends.

These are the cornerstone of any salesperson. Contacting them through e-mail, post, or phone is the first step in communicating that you are looking for business and seeking to become a trusted advisor. This list should eventually incorporate previous clients and realtors. It will become the focus of advertising.

While Facebook and other social networking opportunities should not be discounted, a customized newsletter helps set you apart. A well-developed web site is complemented by a newsletter.

Personal web sites can be a very effective marketing tool in this industry.

Be sure to include your photo, information about your company, your most current newsletter, and links to past newsletters. Organize the site so that you are the focus of the page; include your biography, mission statement, and a contract for commitment to your clients; have a section on the first page to link employers' web sites, mortgage calculations, on-line applications, and current rates. There are numerous companies that can help posture your site to drive in hits and traffic that will increase business.

Strategic partners such as CPA's, investment counselors, financial planners, and attorneys are great sources of business.

By developing these relationships, you will find clients that come to you with a pre-dispositional positive attitude towards your credibility. Some of them will be instant good business while others will require additional leg work to become lendable.

By positioning yourself as a trusted and respected professional, you become a source for reliable information. These strategic partners will expect you to do your own research and they will know if you do not. An original issue to be researched frequently generates additional questions based upon facts not initially revealed or subsequently discovered. Those loan officers who do their own research rather than ask someone for a quick fix will find that their ability to give reliable advice continues to grow. As this confidence increases, so does the quality of their answers, their files, and their closings.

Many things that are considered "old school" are new again if you look for them.

There will never be a replacement for personalized service, integrity, and commitment. Don't forget that all prospecting is wasted without follow-up.

Most loan originators obtain any measure of volume through agents and the personal relationships developed by providing service. As a result, the service you sell through marketing, cold calling, and bull dog determination must be as ready, willing, and able as you are.

## **Advertising in Today's World**

We have gone over some of the important daily activities a mortgage loan originator conducts in this business, such as completing an application, qualifying the borrower, providing certain disclosures, informing the borrower of the many costs and fees associated with obtaining a mortgage, calculating those costs and fees, understanding what is needed in order to close a mortgage loan and fund the loan, and knowing how to lawfully conduct these activities. We should also review an important part of what a mortgage loan originator can do in order to acquire business: advertising. This is a current issue that affects all mortgage loan originators, no matter the state.

Advertising can be a very important avenue for the acquisition of clientele; therefore we must discuss some of the rules in place involving advertising as a mortgage loan originator. There are numerous laws that affect advertising: SAFE Act, Equal Credit Opportunity Act, Regulation B, Truth In Lending Act, Fair Housing Act, Real Estate Settlement Procedures Act, Dodd-Frank, Consumer Protection Act, Telemarketing Sale Rule, Fair Credit Reporting Act, Gramm-Leach Bliley Act, etc... We have already discussed some of the above laws regarding advertising in other lessons; however there are certain specifics that we have not covered yet that are important considering the differing ways one can advertise as a loan originator.

There are various venues by which one can advertise. Aside from print media, online media has become increasingly popular, if not, necessary. Advertising via online media can be an easy, fast, and important tool in advertising for business in the real estate industry. To give you an idea of how many options one has for online media marketing, here is a list of some of the platforms available:

Facebook  
LinkedIn  
Twitter  
Google +  
Instagram  
YouTube  
Pinterest  
Tumblr  
Flickr  
Reddit  
Snapchat  
Vine  
Periscope  
WhatsApp  
Quora  
StumbleUpon  
Viber

This list isn't even all-inclusive. As time goes by, more platforms become available and popularized. Considering that online media, particularly social media, have become popularized in more recent years, and all sites are different with regards to how one publishes and what one publishes within them, the mortgage industry has had somewhat of a delay in determining clear guidelines for using these media for the purposes of gaining borrowers' business. For that reason, most of the regulation or rules providing guidance on how to advertise appropriately using social media or online platforms are provided at the state level rather than the federal level. That said, some federal guidance on the subject does exist.

The Equal Credit Opportunity Act prohibits creditors from discriminating based on any of the protected classes. These rules apply when advertising as well as when extending credit. Regulation N, or Mortgage Acts and Practices, issued in 2009 and enforced by the CFPB starting in 2011, provides an Advertising Final Rule that applies to those under FTC jurisdiction for advertising mortgages. The Rule states specific deceptive acts and practices that are prohibited and expresses that misrepresentation in any commercial communication is prohibited. This includes making misrepresentations of:

- the existence, number, amount or timing of minimum or required payments,
- the right of a consumer to reside in the dwelling that is subject of the mortgage credit product,



- the potential for default under the mortgage,
- the effectiveness of the mortgage in helping pay down debts,
- that the mortgage is or relates to a government benefit, endorsed, or sponsored by, or affiliated with any government program.

These rules apply to any commercial message in any medium that promotes directly or indirectly, a credit transaction. These include messages on Internet websites and social media. Regulation N expands the definition of a commercial communication to include any written or oral statement, illustration, or depiction designed to result in a sale or create interest in purchasing goods or services, whether it appears on or in certain media. Again, the term media here includes Internet network or social media application.

Regulation Z also provides rules regarding the advertisement of the extension of credit. This particular regulation imposes additional disclosures when certain trigger terms are included in the advertisement for closed-end credit [12 CFR §1026.24(d)]. Trigger terms include:

- the amount or percentage of down payment,
- the number of payments or period of repayment,
- the amount of any payment, the amount of any finance charge, and
- the annual percentage rate.

For open-end credit, Regulation Z denotes the following trigger terms:

- any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening a plan, stated as a single dollar amount or a reasonable range;
- any periodic rate used to compute the finance charge, expressed as an APR;
- the maximum annual percentage rate that may be imposed in a variable-rate plan.

Specifically regarding multiple-page advertisements and electronic advertisements, Regulation Z states that if information is provided in a table or schedule, it must be in sufficient detail and is considered a single advertisement if:

- the table or schedule is clearly and conspicuously set forth; and
- any statement of the credit terms appear anywhere else in the advertisement clearly refers the consumer to the page where the table or schedule begins. [12 CFR §1026.24(e)].

Therefore, when creating an advertisement, it is important to review for trigger terms and make sure that the proper disclosures are made available. The legal requirements regarding trigger terms relate to the “One-Click Away” Rule, which is located in the Commentary section of Regulation Z. The rule provides that additional disclosures relating to trigger terms must be located one-click away from the triggering term. Aside from providing a link to additional disclosures, the FFIEC’s Section on Unfair, Deceptive, or Abusive Practice, states that messages published on social media must not be deemed unfair or misleading to the consumer. Advertisements must always be clear and never fraudulent or misleading in any way.

*It is important to keep these rules in mind when advertising for business. The Consumer Financial Protection Bureau does not take a violation of the law lightly. Also important to remember is the fact that some products can be trickier to advertise than others. For instance, reverse mortgages happen to be very different from other traditional mortgage products. Though ECOA prohibits any discrimination based on age, reverse mortgages are products that solely focus on consumers 62 years of age or older. This does not mean that ECOA is being violated by offering the product, but caution must be practiced when selling and advertising such a product. Unfortunately, because of the nature of the product, it is easy to misrepresent information about it in an advertisement. So much so that within the last year the CFPB has taken action against three reverse mortgage companies for having used deceptive advertisements. The CFPB feels strongly that a mortgage product that focuses on a population of a certain age, as well as any other type of product, must be advertised clearly and honestly so as not to mislead the consumer.*

As mentioned earlier, individual states are mostly responsible for providing guidance regarding how to appropriately advertise mortgage products and services via online social media sites. This guidance is valuable as mortgage loan originators are held liable for what they post online as advertisements. There are a few guidelines provided by state commissions and legislatures that are common amongst most states. For example, any advertisement should include the loan originator’s NMLS ID. This guidance goes hand in hand with the federal regulation stating that advertisements cannot have the name of a different lender other than the one that has sent or created the advertisement itself [12 CFR §1026.24(i)(4)(i)(ii)]. A consumer should always know the name and license number of the licensee publishing the

advertisement. When advertising a product from a particular mortgage institution, the institution's NMLS ID should also be provided.

Where it gets a little more complicated with regards to compliance and guidance is the way in which this required information is provided in different social media platforms. On Facebook, the loan originator can simply attach their NMLS ID to the user page they use to post advertisements for their business, as all posts always include the name or title of the page where the advertisement has been published. However, Twitter is a platform that has limits on how much one post can include. Since the limit is for 140 characters, it could pose a space problem to have to include the licensee's name and NMLS ID within the post. Therefore, in some states, such as Alabama, guidelines suggest that a licensee can provide the required information outside of the advertisement so as to save space, but must include it within one click on the person's name on the account on Twitter. In other words, similar to the one-click away rule, the consumer must be able to arrive at the required information through a link via one click on the account holders' name.

Among other examples of state specific guidance on social media advertising is Vermont's provision that if an address is provided in the advertisement, it must be a licensed location. Additionally, the institution employing the individual mortgage loan originator should be responsible for overseeing any advertisements created by its employees. In most cases, appropriate oversight by the employing institution includes the establishment of a social media advertisement policy that provides guidance for advertising online. Furthermore, there should be a review of all advertisements prior to publication in order to make sure that the advertisements are in compliance with the law, whether national or state law.

Generally speaking, the FTC, the CFPB and state authorities have the right to investigate compliance regarding mortgage advertisements. It is critical that licensees practice caution in what they include in their advertisements, as they will be held liable for noncompliance with the law. Any violation could result in license suspension, revocation, and/or fines. Mortgage lending institutions should have a social media policy. It is a good idea for a licensee to become familiar with the policy governing their employer institution to avoid further risk in their advertising. The policy will include any legal disclaimers required. Furthermore, a visit to the state legislature website and a search under licensing law will enable the licensee information regarding rules and regulations provided by the individual state regarding appropriate advertising. Overall, the licensee should always be honest and clear in what they state in any advertisement. Any misrepresentation will result in disciplinary action.

## **TERMS USED IN MORTGAGE LENDING**

### **Mortgage Loan Originator**

- An individual who takes a residential mortgage loan application, and,
- Offers, or negotiates the terms of a residential mortgage loan for compensation or gain

### **Residential Mortgage Loan**

- Any loan primarily for personal, family, or household use
- Secured by a mortgage, deed of trust, or other type of security interest on a dwelling

### **Retail lending:**

- The traditional way
- Buyer applies to Acme Bank
- Loan originator who works with buyer is a loan officer employed by Acme
- Loan officer submits application to Acme's underwriting department
- If approved, Acme funds loan

### **Wholesale lending:**

- Buyer applies to Zenith Mortgage
- Zenith, acting as an intermediary, may be:
- A loan correspondent processing the loan on behalf of a large national lender, MegaBank
- A mortgage broker submitting the application to one or more lenders, including MegaBank
- By lending indirectly, through local loan correspondents or mortgage brokers, wholesale lenders reduce their overhead
- They don't have to pay for office space or have employees in every place they make loans

### **Loan correspondents**

- Make loans for large investors, such as life insurance companies, pension funds, or wholesale lenders

- Correspondent may handle entire origination process and underwriting, but loan funds ultimately come from the investor or wholesale lender
- Local lending institutions and mortgage companies often act as loan correspondents

**Mortgage broker:**

- Only a go-between, not a lender
- Brings borrowers and lenders together in exchange for a commission
- Helps home buyer choose lender(s) and submit application(s)
- May provide preliminary approval based on lender's underwriting rules
- But doesn't actually underwrite, approve, or fund loan, as a general rule

**Table funded loan**

- Creates the impression that the mortgage broker is the lender
- Mortgage broker designated as originating lender in loan documents
- Loan actually funded by wholesale lender "at the closing table"
- At closing, broker assigns loan rights to true lender, receives service release premium
- Raises consumer protection issues

**Adverse action:** Rejection or denial usually influenced by a consumer report or when an unfavorable credit decision is made.

**Aliases:** Other names a person is known by or has gone by

**Amortization:** The paying off of debt in regular installments, or payments of principal and interest, over a period of time to gradually reduce funds owed

**Annual Percentage Rate – APR:** Shows costs of funds over the term of the loan - includes any fees or additional costs

**Application:** Any request from a borrower for an offer of mortgage loan terms

**Appraised Value:** The dollar value of a home based on the market conditions

**Arrears:** A monthly payment, such as interest, that is applied to the previous month

**Blanket authorization:** Unlimited permission

**Cash back:** Funds a client receives from equity in the home

**Chapter 13 Bankruptcy:** Bankruptcy code that enables consumer to repay something to their creditors over time, thereby allowing credit obligations to become current

**Charged off accounts:** Used by creditors for uncollectible debts that are considered a loss. Consumer remains responsible for debt and the credit report will carry it for seven years

**Child support judgment:** Court order that provides for the collection of past or current monetary support or health insurance for a child

**Civil and small claim judgment:** An action taken against someone in a court of law to recover debt, damages or property

**Collateral:** Property accepted as security for a mortgage loan or other debt

**Collection accounts:** Unpaid funds placed into an account until the debts are satisfied

**Compliance:** Rules or laws that must be followed

**Consolidate:** To combine all debts into one debt

**Consumer:** A cardholder or natural person to whom consumer credit is offered or extended

**Conventional loan program:** A loan that is not VA or FHA

**Cost of credit:** Amount consumer must pay to acquire a loan, usually referred to as fees or charges

**Creditor:** Person or business money is owed to

**Deed of Trust:** A legal instrument in place of a mortgage to secure payment of a promissory note

**Default:** Foreclosure

**Derogatories:** Unfavorable credit ratings

**Detached building:** A building that stands freely on its own with no other units attached to it

**Discharge papers:** Military documents given to veteran upon separation of active duty, stating under what category the veteran was discharged – **DD214** form

**Disclose:** To reveal information to someone

**Disclosures:** Documents that reveal to consumer the arrangement they are about to enter into

**Discrimination:** To go against a person unfairly

**Divorce decree:** Document showing the settlement between the parties in a divorce

**Entity:** An individual or unit

**Equity:** The value of a property minus any mortgage balances or liens

**Escrow:** Money placed in a special savings account to pay property taxes and insurances

**Federal benefits:** Items such as health care and financial assistance provided by the Federal Government

**Federal Trade Commission – FTC:** An independent agency of the U.S. Government responsible for keeping American business competition fair

**Federally related residential loan:** Includes any loan, except for temporary financing, which is secured by a first or subordinate lien on residential, 1-4 family real properties

**Full legal names:** Complete name of the borrower, first, middle, last, and maiden names

**Government backed:** Insured by HUD or another governmental agency

**Gross Monthly Income – GMI:** The total amount of funds received by an employee before deductions

**Guarantees:** Assumes responsibility for repayment of the debt

**Guidelines:** Rules to be followed

**Homestead exemption:** Causes the assessed value of a primary residence to be reduced to calculate property taxes

**Identity fraud:** When someone impersonates an unknowing consumer and incurs debts in the unknowing party's name

**Incentive pay:** Money paid for specific performance

**Installment debt:** Regular payments of principal and interest for a financial debt to a lender

**Institutions:** A financial organization that lends money to individuals

**Interim:** The time during the construction of a home

**Interim interest:** Money collected from the date of closing through the end of that same month

**Investor:** Person who commits money for a financial return

**Judgment:** A decision of a court of law stating one person is indebted to another

**Legal description:** Describes a piece of property using specific distances and landmarks

**Legal holiday:** A holy or sacred day or festival permitted by law as a day of exemption from labor

**Lien:** A claim against a property for the payment of a debt

**Loan to value ratio – LTR or LTV:** The loan amount expressed as a percent of either the purchase price or appraised value

**National origin:** The country of an individual's birth or of their ancestry

**Negligent misrepresentation:** Careless falsification

**Paid finance charge:** Those charges that were not used to purchase the home but were used in connection with the closing of the loan

**Parcel:** A piece of land

**Pension:** A retirement plan

**Permanent loan:** The loan the client will have for the term of the loan; usually pays off the construction loan

**Public Sector Investor:** A person or company who purchases an area for use by all people

**Ratios:** Numbers that determine a borrower's ability to pay back a loan based on their house payment and other monthly debt

**Real estate appraiser:** An individual, usually hired by a lender, to give an estimate of value (dollar amount) on a property

**Registry:** The Nationwide Mortgage Licensing System and Registry, or NMLS.

**Rescission:** The ability to revoke or cancel

**Residences:** A person's dwellings

**Schedules:** Attachments on tax returns

**Seasonal work:** Employment only during certain times of the year

**Seasoned:** Funds in a bank account for the last three months

**Second home:** A residence other than the primary

**Secondary market:** A market where existing mortgages are bought and sold

**Securities:** Something given as a pledge of repayment

**Self-employed:** Individual who works for himself or herself

**Separate Maintenance:** An allowance made by one spouse to the other under a deed of separation

**Settlement charges:** Costs incurred from the closing attorney

**Settlement services:** Assistance involved in the full loan transaction from application to closing

**Settlement Statement:** Document provided at closing which details costs from and to both buyer and seller. Also known as a HUD-1 or a HUD-1A.

**Shareholder:** Individuals who own stock in a company and also own the company itself

**Social Security Awards Letter:** States the income the borrower will receive from Social Security

**Starter home:** The first home a family lives in

**Subordinate position:** A position taken when an additional lien securing the property is filed while the existing lien remains and is not paid off

**Tax lien:** A claim against a property for non-payment of taxes.

**Term:** Length of time

**Time sensitive:** Due within a certain number of days

**Title:** Legal right to possess

**Traditional underwriting criteria:** Guidelines set forth by FNMA or Freddie Mac

**Underwriter:** Person who gives the credit decision about a loan file

**Unique Identifier:** Number or identifier that will permanently identify locate a registered mortgage loan officer

## **LESSON SUMMARY**

### **Ethics**

- A moral philosophy
- In establishing moral guidelines you are responsible to:
  - Ensure employees conduct themselves properly
  - Make sure every consumer is treated fairly
  - Be self-disciplined
- Mortgage originators should assist and educate consumers in the home loan process
- Failure to uphold ethics could result in:
  - Payment of fines and/or make financial restitution
  - Serve time in prison
  - Suspension or loss of professional license
  - Have personal property seized

### **Federal lending laws**

- **Real Estate Settlement Procedures Act (RESPA) – Regulation X**
  - Consumer must receive certain disclosures in a timely manner
  - Does not allow kickbacks that increase the cost of settlement services
  - This act helps buyers be better shoppers in the home buying process
- **Equal Credit Opportunity Act (ECOA) - Regulation B**
  - Cannot discriminate based on:
    - race,
    - color,
    - religion,
    - sex,
    - national origin,
    - disability,
    - handicap,
    - marital status,
    - age,
    - public assistance, and
    - familial status
- **Home Ownership and Equity Protection Act (HOEPA) - Regulation Z**
  - Will not allow abusive practices in refinances
  - Closed-end home equity loans with high interest rates or high fees

- **Truth in Lending Act (TILA) - Regulation Z**
  - Disclose fees/costs associated with loan in a straightforward method
  - Must provide disclosures within permissible time frame with truthful estimates/final figures
  - Document must show: Annual Percentage Rate (APR), terms of the loan and total costs to borrower
  - Must follow advertising rules
- **Home Mortgage Disclosure Act (HMDA) - Regulation C**
  - Prohibits redlining
  - E - Appraisal

### **Ethics in appraisals**

- **Valuation Independence Rule**
  - Created to further the integrity of the home appraisal practice in the mortgage finance industry by prohibiting certain behavior of the people involved in the appraisal process.
- If property is overvalued, loan amount will be larger than it should be and lender's risk of loss is greater
- In 1989, Congress passed Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
- Provisions prompted states to pass licensing and certification legislation for appraisers
- Appraisals used in "federally related" loan transactions must be:
  - Prepared by state-licensed or certified appraisers
  - In accordance with uniform standards of professional appraisal practice
- "Federally related" loan is one made by any bank or savings and loan association that is regulated or insured by federal government:
  - Prepared by state-licensed or certified appraisers
  - In accordance with uniform standards of professional appraisal practice

### **Fraud in lending**

- Fraud is a deception against another person.
- Shams come in the form of: An act, expression, omission, concealment or misrepresentation.
- The FBI lists two type of categories of mortgage fraud:
- Fraud for profit and Fraud for housing

### **Fraud for profit**

- Involves criminals with intent to deceive
  - Individuals who do not intend to pay back loan
  - Objective is to inflate the value of property
  - Provide false income and credit info
  - Remove the equity
  - Abandon the home and payments
- The fraud could involve: Seller, Buyer, Loan officer, Appraiser, Real estate agent, Processor, Underwriter, or several of these parties colluding to defraud.

### **Fraud for housing**

- Borrower is the perpetrator
  - Owns home under false pretenses
  - Falsifies supporting loan documents
- Four categories of Fraud for Housing: Occupancy, Cash to close, Income to qualify and/or Appraisal

### **Straw borrower**

- Imposter
  - Acts like real borrower
  - Allows the use of their name
  - Allows the use of their credit history
  - Real borrower kept secret to gain loan approval
- Used in situations where the actual borrower may:
  - Not have the income or credit history
  - Not intend to occupy the home as a principal residence
  - Not be a legal alien
  - Not be eligible for a special purpose loan
  - Intend to use the property for flipping

### **Identity theft**

- Occurs when a person steals personal info from an individual to use for financial gain
  - Can be used on a mortgage loan application
  - Used by underhanded spouse to refi to pay off debt
  - Spouse may use to finance a secret second life

### **Builder bailout**

- Builder has trouble moving property
  - May use a relative to secure fake sale
  - Could offer bargains like no money down or a silent second
  - Red flags would be if the borrower: Barely qualifies, the source of funds is questionable or is affiliated with the builder

### **Flips**

- Property being purchased at an inflated appraised value
  - Purpose to obtain a larger loan and skim the equity off of the property
  - Mislead a buyer into thinking home is worth more
  - Appraiser inflates the value
  - Borrowers have negative equity

### **Loan application fraud**

- Certain sections to search for fraud
  - Employment information
  - Years on job is consistent with age
  - Assets column
  - Substantial assets = ample credit
  - Home sized for occupants
  - Debts listed match credit report
  - Property purchased from landlord or employer

### **Income fraud**

- Verification of Employment
  - If borrower is related to employer or is employer, further investigation is required
  - Investigate W-2
  - Lists exact earnings
  - Form should be the borrower/employee copy
  - A consistent font
- Self-employed borrowers
  - 25% or more ownership
  - Ensure tax returns are signed and dated
  - Address or profession is consistent with info on application
  - Handwriting or font throughout return is the same
  - No evidence of whiteouts
  - Check stub should be checked for: Company name and/or employer name is not handwritten, Income is listed in exact figures and SSN matches all documents

### **Asset fraud**

- On VOD, be aware of:
  - Available cash is not adequate funds to close loan
  - Dollar amounts are rounded
  - Significant changes in balances in short periods of time
  - Borrower's name not listed on account
  - Crossed out information
  - Fees collected for insufficient funds

### **Sales contract fraud**

- Sales agreement should be checked by lender for validity
- Sales agreement should be specific:
  - Borrower different from purchaser
  - Sales price way below market value



- No realtors involved
- A second mortgage is shown
- One or more realtors handle transactions

### **Appraisal fraud**

- Appraisal fraud occurs when pressure is placed on appraiser to inflate values.
- Sometimes individuals in the real estate industry “convince” the appraiser to embellish a value with promises of:
  - Continued appraisal requests
  - Cut of the illegal profits
- Lender should scrutinize appraisal’s contents looking for signs of an appraisal scam, such as:
  - Subject property value has increased when others in same area are declining
  - Comparables do not match subject
  - No data source for the comps to show recordation information
  - Photo of subject show “For Sale” or “For Rent” sign in front yard

### **Credit report fraud**

- Credit report is good source for detection of fraud:
  - Social security no. and all personal information should be consistent with all loan docs
  - Items of concern on a credit report:
  - SS# is not valid
  - Employment date is inconsistent
  - Zero balances on all account

### **Quality control**

- Quality control tactics
  - Personnel trained to detect and prevent fraud
  - Quality control program
  - Updates on compliance info
  - Document checklist
  - Fraud detection practices
  - Red flag situations
- Freddie Mac has established practices for fraud prevention on their website
  - Includes a mortgage screening checklist
  - FBI – Financial Crimes Report, details their focus on fraud crimes
  - Financial Institution Fraud Unit identifies mortgage fraud as a principal target
  - Separate forms for reporting “Origination” and “Servicing” fraud

### **Ethical Behavior – Consumers**

- Should give true and accurate info on application
- Supply supporting docs/exact duplicates

### **Appraisers**

- Give “fair market value”
- Never be persuaded to give fraudulent value

### **Underwriters should assure that**

- Borrower - Unlikely to default
- Property - has enough value for loan

### **Ethical Behavior – Investors should avoid**

- Straw Borrowers
- Appraisers who give false values
- Bogus supporting docs

### **Warehouse Lenders**

- Maintain a strong screening process
- Fund only legitimate loans
- Control funds from investors

**Real Estate Licensees**

- Should show honesty regarding buyer/seller
- Do not practice “money under the table”
- Document all items on the Closing Disclosure, which is provided to the borrower

**Closing Agent**

- Review documents for loan with borrower
- Ensure all charges are legitimate

**Employers**

- Provide honest information regarding wages and expenses
- Self-employed borrower should provide accurate supporting documents

**National Association of Realtors®**

- Strict code of Ethics & Standards of Practice
- Realtors should keep personal info regarding consumers private
- Realtors must take steps to ensure the privacy, security and confidentiality of customer files

**Prospecting for business**

- The Holy Grail for mortgage loan officers is truly the consistent supply of qualified prospects.
- Put a list together of names from family and friends
- Personal website and social media
- Strategic partners such as CPA’s, investment counselors, financial planners, and attorneys are great sources of business.
- Provide personalized service based on integrity, and commitment
- Develop strong follow-up skills
- Laws that affect advertising as a mortgage loan originator



## Overview

Who is Fannie Mae/Freddie Mac?

Secondary Market Agencies

Mortgage Backed Securities

History

On the Brink of Insolvency

Private Mortgage Insurance (PMI)

Homeowners Protection Act of 1998 - HPA

Flood Insurance

## Who is Fannie Mae/Freddie Mac?

Fannie Mae (Federal National Mortgage Association – FNMA) was established in 1938 as a response to the effects of the Great Depression on the housing market. Functionally Fannie Mae buys loans from banks and then sell those loans to investors.

Originally a government agency it became a private company in 1968.

Freddie Mac (Federal Home Loan Mortgage Corporation) was established in 1970. Like their secondary mortgage market counterpart Fannie Mae, they also buy loans from banks and then resell those loans to investors.

Freddie Mac's intended purpose was to break up Fannie Mae's monopoly in the secondary mortgage industry.

## Who is Ginnie Mae?

Ginnie Mae, the Government National Mortgage Association, or GNMA, is a corporation wholly owned by the federal government and operating within the Department of Housing and Urban Development (HUD).

Ginnie Mae guarantees investors the timely payment of principal and interest on MBS derived from loans insured or guaranteed by FHA and the VA.

Unlike Fannie Mae and Freddie Mac, Ginnie Mae does not purchase mortgages.

## Secondary Market Agencies

Fannie Mae and Freddie Mac are government-sponsored enterprises (GSE), chartered by Congress and supervised by HUD

**Fannie Mae:** Federal National Mortgage Association – FNMA

**Freddie Mac:** Federal Home Loan Mortgage Corporation – FHMLC

## **Ginnie Mae:** Government National Mortgage Association – GNMA

*Fannie and Freddie less discussed little sister, Ginnie Mae, is a bit different in the fact that she is a government-owned corporation within the U.S. Department of Housing and Urban Development (HUD)*

- Secondary market agencies also issue mortgage-backed securities (MBS)
- Mortgage-backed security is an investment instrument with pools of mortgage loans as collateral. Investor returns are monthly payments from the secondary market agency.
- Investors prefer MBSs to actual mortgage loans for several reasons:
  - More liquid than mortgages
  - Can be purchased in small denominations
  - Working with borrowers to prevent default

## **Fannie Mae**

*Fannie Mae **takes mortgage loans** from banks, in order to repackage them in the form of **mortgage-backed securities**. There are limits on the types and size of loans it can guarantee.*

*Those **mortgage-backed securities are sold** to investors, and Fannie Mae guarantees that the loans will be repaid.*

*Fannie Mae also **borrow money from the debt markets**, traditionally at a rate much lower than other banks, and uses it to **buy mortgages it holds as its own investments**. By buying these loans, Fannie injects new money into the housing economy.*

## **MBS Guaranties**

- Agency subtracts guaranty fee before passing payments to investor
- A servicing fee is deducted for the lender servicing the loan
- Loan servicing includes:
  - Processing payments
  - Dealing with collection problems
  - Working with borrowers to prevent default

## **MBS Trading**

- MBSs can be purchased directly from Fannie Mae, Ginnie Mae, or Freddie Mac when first issued

## **Private-Label Securities**

- Private firms also buy and pool mortgage loans and issue securities called “private-label mortgage-backed securities”
- These firms are often subsidiaries of:
  - Investment banks
  - Financial institutions
  - Home builders

## **Functions of Secondary Market**

- The secondary market serves two important functions for real estate industry:
  - Makes funds available for mortgage loans, promoting home ownership
  - Moderates adverse effects of real estate cycles, providing some stability

## **Example**

Acme S&L has a long list of prospective borrowers who need funds for the purchase of homes. Acme's problem is that all of its savings deposits are already tied up in mortgage loans. But by selling its existing mortgage loans on the secondary market, Acme can get the funds it needs to make new loans and satisfy its customers. The effects of a tight money market in Acme's local community are moderated because Acme can get funds in the national secondary market.

If Acme S&L had a surplus of deposits instead of a shortfall, it might have a difficult time finding enough local investments to absorb its funds. In this case, Acme could buy mortgages or mortgage-backed securities on the secondary market - - in essence, investing in real estate located all over the country, without ever seeing the properties it is helping to finance or meeting the borrowers who are buying them.

- Availability of funds in the primary market depends on the secondary market
- Mortgage funds flow between the two markets

- Funds given to home buyer by lender in primary market
- Mortgage sold to secondary market agency
- Agency pools mortgages and sells as MBS, which frees agency funds to purchase more mortgages
- As agencies buy more mortgages, more funds are available for primary market lenders to make more loans
- If a lender doesn't sell a loan on the secondary market, it is kept in portfolio.
  - Only a small percentage of loans are kept in portfolio today

### **Standardized Underwriting**

- Loans sold to secondary market agency must comply with agency's underwriting rules:
  - Apply when qualifying loan applicants
  - Agencies have uniform application forms, appraisal forms and mortgage documents
- If lender violates agency rules, lender may be required to buy loan back from agency
- Guidelines and uniform documents are a quality control system to ensure the quality of loans purchased by secondary market agencies

*Inspires investor confidence & strongly influences primary market lenders*

### **Historical Background**

#### **Fannie Mae**

- Created in 1938 by federal government in response to Depression-era credit problems
- Original purpose to provide secondary market for FHA-insured loans
- 1948 – authorized to buy VA-guaranteed loans
- 1968 – reorganized as a private corporation owned by stockholders
- HUD retains limited authority over it as a Government-Sponsored Enterprise (GSE)
- Created and supervised by the federal government - Owned by private stockholders

#### **Freddie Mac**

- Created in 1970 by the Emergency Home Finance Act
  - Like Fannie Mae, it is a government-sponsored enterprise
- Original purpose: to assist savings and loan associations hit hard in 1969 recession

#### **Ginnie Mae - Like Fannie Mae, it is a government-sponsored enterprise**

- Established in 1968 and is wholly owned by the federal government and operates within the Dept. of Housing and Urban Development (HUD)
  - Guarantees the principal and interest payment on mortgage-backed securities issued by program participants
- Pioneered the issuance of mortgage backed securities (MBS)
- Lenders “package” similar loans together for sale to a secondary market agency. Loans must meet quality standards of the purchasing agency

### **Agencies Today**

- Fannie Mae and Freddie Mac (the GSEs) buy conventional loans, as well as FHA and VA loans
  - GSE status gives them certain advantages and restrictions
- Restrictions/responsibilities of GSEs
  - GSEs restricted by charter to investment in residential mortgage assets
  - Required to meet affordable housing goals set by HUD
  - Must promote programs to help provide affordable home financing and rental housing

### **GSE's and Subprime Loans**

- In 2005, Fannie Mae and Freddie Mac began buying significant numbers of subprime loans.
  - Primarily A-minus loans: this is the top layer of subprime market.
- Encouraged to do so by government, to help meet affordable housing goals.

## Public Benefits from GSEs

- Before current crisis, many industry analysts credited Fannie Mae and Freddie Mac with:
  - Dramatically increasing home ownership rates
  - Reducing mortgage interest rates
  - Enabling lenders to offer larger variety of mortgage loan products
  - Cutting down the time and cost involved in obtaining a mortgage
  - Making underwriting practices in industry sounder and fairer
  - Providing mortgage lenders access to global capital markets as a source of funds

## GSEs and the Economic Crisis

- Before current crisis, critics argued:
  - Claims about how much GSEs benefited public were exaggerated
  - GSEs were too large and had too much power over mortgage industry
  - GSEs limited opportunities for other investors and enterprises
  - GSEs weren't being run well (2004 accounting scandals)
- By 2007, almost one-third of Fannie Mae and Freddie Mac's new purchases and guaranties involved riskier loans
- As the subprime crisis began to unfold, house prices dropped and foreclosure rates rose sharply
- Caused GSEs' stock prices to plunge, further undermining their financial stability

## Conservatorship

- Housing and Economic Recovery Act of 2008 - (HERA) created new independent regulatory agency to oversee GSEs [Housing and Economic Recovery Act of 2008/Division A/Title I]
- Federal Housing Finance Agency [1311 (a)(b)(1)(2)(c)]
  - FHFA was the result of a legislative merger of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB) and the U.S. Department of Housing and Urban Development (HUD) GSE mission team
  - FHFA regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks [1311 (b)(2)]
- September 2008: to prevent economic consequences of GSE failure, FHFA placed both agencies in a conservatorship [1313 (All)]
- Essentially a government takeover
- Terms of GSE conservatorship:
  - Top management replaced
  - Voting power of shareholders and directors terminated
  - To maintain solvency of GSEs, government would:
    - Buy securities from the GSEs
- Buy up to \$100 billion of stock in each GSE

## Federal Guaranty

- In Ginnie Mae securities have always been backed by "full faith and credit" of U.S. government
  - Ginnie Mae is a government agency
  - Investors won't lose their invested capital in an economic crisis
- In contrast, securities issued by Fannie Mae and Freddie Mac didn't carry a government guaranty
  - A GSE's private guaranty ensured only that investors would receive timely payment in spite of borrower default
  - No protection against financial crisis affecting the GSEs themselves
  - Guaranty usually worthless if guarantor bankrupt
- However, investors believed government would feel obligated to intervene if Fannie Mae or Freddie Mac became insolvent
  - Investors therefore viewed GSE mortgage-backed securities as carrying implicit government guaranty
- After conservatorship announced, government confirmed federal guaranty
  - GSEs were "too big to fail"
  - Default on payments to MBS investors could have drastic effect on national economy

## Private Mortgage Insurance (PMI)

When a borrower applies less than 20 percent towards a down payment on a home, the lender will require private mortgage insurance - PMI.

The less the buyer puts down, the higher the risk to the lender. This is a policy that will protect the lender in the event of default on the mortgage loan.

- Borrower pays the premium
- Lender is the beneficiary

There are two type of mortgage insurers:

- Government – Federal Housing Administration - FHA
- Private – Corporations will underwrite

#### EXAMPLE CALCULATION

- Purchase price and appraised value = \$200,000
- Borrower makes a 10% down payment
- PMI company charges an annual premium of 0.49%
- Annual premium will be \$882
- \$882 is divided by 12 months
- Borrower will pay \$73.50 for PMI insurance
  - This amount is applied to their escrow account
    - Calculation:
      - \$200,000 minus 10% down payment = Loan amount of \$180,000
      - \$180,000 x 0.0049 = \$882 divided by 12 = \$73.50

#### Homeowners Protection Act of 1998 - HPA

Allows borrowers with conventional mortgages signed on or after July 29, 1999, to request PMI cancellation once the value reaches 80%.

The borrower must be current on the loan and have a good payment history. The lender may require an appraisal of the property to ensure it has not declined in value. The lender is required to notify the borrower at closing how many years and months it will take to reach an 80 LTV.

Also, the HPA rules require PMI must be automatically removed once the balance of the loan has been reduced to 78 percent of the original value (defined as the lesser of the purchase price or appraised value). Borrower must be current on their mortgage payments.

On an FHA loan the following will apply for the Mortgage Insurance Premium or MIP.

#### 15-year loan term for FHA loans sized \$625,000 or less:

- 15-year loan terms with LTV over 90%: 0.70 percent annual MIP
- 15-year loan terms with LTV under 90%: 0.45 percent annual MIP

#### 30-year loan term for FHA loans sized \$625,000 or less:

- 30-year loan terms with LTV over 95%: 0.85 percent annual MIP
- 30-year loan terms with LTV under 95%: 0.80 percent annual MIP

**Note: Loans above \$625,000 are subject to an additional 25 basis point (0.25%) annual FHA MIP increase.**

**Note:** FHA will remove annual MIP after 11 years for homeowners whose beginning LTV is 90% or less. All other FHA loans pay FHA MIP for as long as the loan is active (not paid-in-full or refinanced away).

#### Flood Insurance

The Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program (NFIP) allowing homeowners to purchase flood insurance. Flood insurance can also be purchased by business owners and renters. It protects buildings, dwellings and their contents.

It is important to note that a homeowner's policy will not cover flooding; flood insurance is the borrower's only protection.

If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan. Those homes located in an SFHA have a 1% or greater chance of flooding in any given year. This is comparable to a 26% chance of flooding during a 30 year mortgage. Although not required, those outside of the SFHA can carry flood insurance for added protection.

These are the geographic areas (flood zones) that FEMA has defined according to varying levels of flood risk. There will be different zones to identify the type of flooding for that area.

- **B , X and C - Moderate to Low Risk Areas - Insurance available, but not a requirement**
- **A, AE, A1-30, AH, AO, AR, A99, V, VE, V1-30 - High Risk Areas - Mandatory flood insurance requirements**
- **V, VE, V1-30 - High Risk Coastal areas - Mandatory flood insurance requirements**
- **D - High Risk Coastal areas - Mandatory flood insurance requirements**

### **Freddie Mac/Fannie Mae and Today's Mortgage Origination**

In order to make sure that loan applications are meeting Freddie Mac and Fannie Mae loan standards, both GSE's have created systems of automated underwriting. Desktop Underwriter is governed by Fannie Mae and the Loan Prospector is governed by Freddie Mac.

Mortgage loan originators use these to help efficiently determine whether a loan application meets Fannie Mae and Freddie Mac standards prior to sending them to underwriting. The system enables mortgage loan officers to submit the applications and receive a "findings report."

- On Fannie Mae's Desktop Underwriter, the findings report will state that an application is "Approve/Eligible," if the loan application meets Fannie Mae's standards
- On Freddie Mac's Loan Prospectors, the findings report will state "accept" if the loan application meets Freddie Mac's standards.

Generally, mortgage lending companies will use one program or the other, rather than both automated underwriting systems.

In a previous lesson we discussed that trended credit data will be included in credit reports and that this data will not affect consumer's credit scores, however, it will give a better and clearer behavior pattern of a consumer to a creditor. In line with this, Fannie Mae's Desktop Underwriter's (Version 10.0) includes the analysis of trended data.

Fannie Mae's Desktop Underwriter will use trended credit data to determine whether the consumer is creditworthy and is able to manage revolving credit accounts. A consumer that generally does not use up a large percentage of their revolving credit limit and pays off their revolving balance regularly will be considered low risk with regards to a mortgage loan. Consumers that use a high percentage of their credit limit and only make their minimum monthly payments will still be considered creditworthy, but will be considered a higher risk than those that pay off their revolving debt regularly.

It is believed that trended credit data will improve the accuracy of FNMA's Desktop Underwriter's risk assessment and will also benefit those borrowers that usually pay off their revolving debt as they will have a better chance of receiving an approval recommendation from the automated system.

### **LESSON SUMMARY**

#### **Fannie Mae**

- Fannie Mae (Federal National Mortgage Association – FNMA) was established in 1938 as a response to the effects of the Great Depression on the housing market. Functionally Fannie Mae buys loans from banks and then sell those loans to investors. Originally a government agency it became a private company in 1968.

#### **Freddie Mac**

- Freddie Mac (Federal Home Loan Mortgage Corporation) was established in 1970. Like their secondary mortgage market counterpart Fannie Mae, they also buy loans from banks and then resell those loans to investors.

#### **Ginnie Mae**

- Ginnie Mae, the Government National Mortgage Association, or GNMA, is a corporation wholly owned by the federal government and operating within HUD.
- Ginnie Mae guarantees investors the timely payment of principal and interest on MBS derived from loans insured or guaranteed by FHA and the VA. Unlike Fannie Mae and Freddie Mac, Ginnie Mae does not purchase mortgages.



## Secondary Market Agencies

- Fannie Mae/Freddie Mac/Ginnie Mae
  - Secondary market agencies also issue mortgage-backed securities (MBS)
  - Mortgage-backed security is an investment instrument with pools of mortgage loans as collateral. Investor returns are monthly payments from the secondary market agency.
  - Investors prefer MBSs to actual mortgage loans for several reasons: More liquid than mortgages, Can be purchased in small denominations, and are guaranteed by the issuing agency

## MBS Guaranties

- Agency subtracts guaranty fee before passing payments to investor
- A servicing fee is deducted for lender loan service
- Loan servicing includes: Processing payments, dealing with collection problems, working with borrowers to prevent default

## MBS Trading

- MBSs can be purchased directly from Fannie Mae, Ginnie Mae, or Freddie Mac when first issued.

## Private-Label Securities

- Private firms also buy and pool mortgage loans and issue securities called “private-label mortgage-backed securities”
- These firms are often subsidiaries of: Home builders, Financial institutions, Investment banks, Home builders

## Functions of Secondary Market

- The secondary market serves two important functions for real estate industry:
  - Makes funds available for mortgage loans, promoting home ownership
  - Moderates adverse effects of real estate cycles, providing some stability
  - Funds given to home buyer by lender in primary market
- Availability of funds in the primary market depends on the secondary market
- Mortgage funds flow between the two markets
  - Moderates adverse effects of real estate cycles, providing some stability
  - Agency pools mortgages and sells as MBS, which frees agency funds to purchase more mortgages
  - As agencies buy more mortgages, more funds are available for primary market lenders

## Standardized Underwriting

- Loans sold to secondary market agency must comply with agency’s underwriting rules:
  - Apply when qualifying loan applicants
  - Agencies have uniform application forms, appraisal forms and mortgage documents
- If lender violates agency rules, lender may be required to buy loan back from agency
- Guidelines and uniform documents are a quality control system to ensure the quality of loans purchased by secondary market agencies

## Fannie Mae History

- Created in 1938 by federal government in response to Depression-era credit problems
- Original purpose to provide secondary market for FHA-insured loans
- 1948 – authorized to buy VA-guaranteed loans
- 1968 – reorganized as a private corporation owned by stockholders
- HUD retains limited authority over it as a Government-Sponsored Enterprise (GSE)

## Freddie Mac History

- Created in 1970 by the Emergency Home Finance Act
  - Like Fannie Mae, it is a government-sponsored enterprise
- Original purpose: to assist savings and loan associations hit hard in 1969 recession

## Ginnie Mae History

- Established in 1968 and is wholly owned by the federal government and operates within the Dept. of Housing and Urban Development (HUD)
  - Guarantees the principal and interest payment on mortgage-backed securities issued by program participants

- Pioneered the issuance of mortgage backed securities (MBS)
- Lenders “package” similar loans together for sale to a secondary market agency. Loans must meet quality standards of the purchasing agency

#### Agencies today

- Fannie Mae and Freddie Mac (the GSEs) buy conventional loans, as well as FHA and VA loans. GSE status means advantages and restrictions
- Restrictions/responsibilities of GSEs
  - GSEs restricted by charter to investment in residential mortgage assets
  - Required to meet affordable housing goals set by HUD
  - Must promote programs to help provide affordable home financing and rental housing

#### GSE's and Subprime Loans

- In 2005 Fannie Mae and Freddie Mac began buying significant numbers of subprime loans. Mostly A-minus loans: top layer of subprime market
- Encouraged to do so by government, to help meet affordable housing goals.

#### Public Benefits from GSEs

- Dramatically increasing home ownership rates
- Reducing mortgage interest rates
- Enabling lenders to offer larger variety of mortgage loan products
- Cutting down the time and cost involved in obtaining a mortgage
- Making underwriting practices in industry sounder and fairer
- Providing mortgage lenders access to global capital markets as a source of funds

#### GSEs and the Economic Crisis

Before current crisis, critics argued:

- Claims about how much GSEs benefited public were exaggerated
- GSEs were too large and had too much power over mortgage industry
- GSEs limited opportunities for other investors and enterprises
- GSEs weren't being run well (2004 accounting scandals)

#### On the Brink of Insolvency

- By 2007, almost a third of Fannie Mae and Freddie Mac's new purchases and guaranties involved riskier loans
- As subprime crisis began to unfold, house prices dropped and foreclosure rates rose sharply
- Caused GSEs' stock prices to plunge, further undermining their financial stability

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#### PMI

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- The less the buyer puts down, the higher the risk to the lender. This is a policy that will protect the lender in the event of default on the mortgage loan.
  - Borrower pays the premium
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  - Private – Corporations will underwrite

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- Allows borrowers with conventional mortgages signed on or after July 29, 1999, to request PMI cancellation once the value reaches 80%.
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- Also, the HPA rules require PMI must be automatically removed once the balance of the loan has been reduced to 78 percent of the original value (defined as the lesser of the purchase price or appraised value).

#### FHA/MIP

- **15-year loan term for FHA loans sized \$625,000 or less:**
  - 15-year loan terms with LTV over 90%: 0.70 percent annual MIP
  - 15-year loan terms with LTV under 90%: 0.45 percent annual MIP
- **30-year loan term for FHA loans sized \$625,000 or less:**
  - 30-year loan terms with LTV over 95%: 0.85 percent annual MIP
  - 30-year loan terms with LTV under 95%: 0.80 percent annual MIP

**Note: Loans above \$625,000 are subject to an additional 25 basis point (0.25%) annual FHA MIP increase.**

**Note:** FHA will remove annual MIP after 11 years for homeowners whose beginning LTV is 90% or less. All other FHA loans pay FHA MIP for as long as the loan is active (not paid-in-full or refinanced away).

MIP Removal - FHA will remove annual MIP after 11 years for homeowners whose beginning LTV is 90% or less. For everyone else, including those making a 3.5% down payment, FHA will charge MIP for the remainder of the loan's term.

#### Flood insurance

- The Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program (NFIP) allowing homeowners to purchase flood insurance. Flood insurance can also be purchased by business owners and renters. It protects buildings, dwellings and their contents.
- A standard homeowner's policy will not cover flooding; flood insurance is the borrower's only protection.
- If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan. Those homes located in an SFHA have a 1% or greater chance of flooding in any given year. This is comparable to a 26% chance of flooding during a 30 year mortgage. Although not required, those outside of the SFHA can carry flood insurance for added protection.
  - FEMA Zones B, X and C: Moderate to Low Risk Areas - Insurance available, but not a requirement
  - FEMA Zones A, AE, A1-30, AH, AO, AR, A99: High Risk Areas - Mandatory flood insurance requirements
  - FEMA Zones V, VE, V1-30: High Risk Coastal areas - Mandatory flood insurance requirements
  - FEMA Zones D: Area of undetermined but possible flood hazards



## Overview

- Title and Title Insurance
- Settlement/Closing Agent
- Explanation of Documents
- Funding

## Title and Title Insurance

**Owner's Title Policy** - Optional - Insures owner against unexpected problems with the title on their property

- Protects against title defects that:
  - Could not be found
  - Were missed during the title search
    - Errors or omissions
    - Forgery
    - Undisclosed heirs
    - Mistakes in the examination
- Some items it will not cover:
  - Violations of building and zoning ordinances
  - Restrictive covenants limiting how property can be used
  - Any conflicts with boundary lines, encroachments, etc.
- Policy is issued in the amount of the purchase price
- This is a one-time fee

**Lender's Title Policy - Requirement of the lender** - insures the lender against unexpected problems with title on the borrower's property. This policy protects their interest in the collateral secured by the real estate. Also guarantees the lender has a legitimate first lien against the property.

- Protects the lender up to the mortgage amount
- Paid by borrower
- One-time fee

## Settlement/Closing Agent: Closing Agent

In many areas, closings are handled through escrow.

- Escrow - neutral third party who holds money and documents for buyer and seller
- Closing agent disburses purchase price and delivers deed when conditions in agreement are satisfied
- Closing agent may be:
  - Independent escrow agent
  - Employee of lender
  - Title company
  - Lawyer
  - Real estate broker

## **Settlement/Closing Agent: Steps in the closing process**

Closing agent responsible for handling details of closing, which includes:

- Clearing liens from title
- Establishing condition of title
- Inspections and repairs
- Buyer's funds for closing
- Preparing documents and recording

## **Settlement/Closing Agent: Clearing Liens From Title**

Any liens that would have higher priority than the new mortgage or deed of trust must be removed.

- Does not include:
  - Property tax liens
  - Special assessment liens

## **Settlement/Closing Agent: Inspections and Repairs**

Lenders often require inspections and certain repairs made before closing. These might include:

- Pest control inspection
- Soil percolation test
- Flood hazard inspection

## **Settlement/Closing Agent: Documents and Buyer's Funds**

- Once approved, lender forwards loan documents to closing agent
- Buyer deposits his part of transaction, such as down payment and closing costs into escrow, and signs loan documents

## **Settlement/Closing Agent: Impound Account**

- Lenders often require buyers to make a deposit into an impound account at closing. An impound account ensures that taxes, hazard insurance, and mortgage insurance are paid on time

## **Settlement/Closing Agent: Hazard Insurance**

- Protects property owner against damage caused by fires, severe storms, earthquakes and other natural disaster
- Usually maintained along with mortgage payments/escrow account

## **Settlement/Closing Agent: Flood Insurance**

If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan.

- Usually maintained along with mortgage payments/escrow account

## **Settlement/Closing Agent: Interim Interest**

- Buyer will also pay interim interest (prepaid interest) at closing
- Buyer's first monthly mortgage payment is generally not due on first day of month immediately after closing, but next month, therefore:
- Interest on mortgage is paid in arrears
  - Arrears means that interest accruing during month is paid at end of month

## **Example:**

- Closing takes place on January 23. Buyer isn't required to make mortgage payment on February 1. Instead, first payment on loan is due on March 1. But interest continues to accrue after closing date, even though payment isn't due
- March 1 payment covers interest that accrues during February. But it doesn't cover interest accrued from January 23 to January 31
- Interim interest payment covers those 9 days of accrued interest

## The Loan Estimate Document Regulation Z, 12 CFR §1026.37 (all)

The Loan Estimate sample is from the Consumer Financial Protection Bureau and is an example of a fixed rate mortgage

See sample at [http://files.consumerfinance.gov/f/201403\\_cfpb\\_loan-estimate\\_fixed-rate-loan-sample-H24B.pdf](http://files.consumerfinance.gov/f/201403_cfpb_loan-estimate_fixed-rate-loan-sample-H24B.pdf)

### Page One

- **Title of the form** - "Loan Estimate"
- The wording will include: "Save this Loan Estimate to compare with your Closing Disclosure"
- **Date issued**
  - Date mailed or delivered to the consumer
- **Applicants**
  - Include name and address of each applicant
- **Property**
  - Address of property with zip code
    - If unavailable, use a description, example - lot number with a zip code
- **Sales price**
  - For a purchase money transaction, use contract sales price
  - If no seller, use appraised value or an estimate of value
- **Loan term**
  - Use years or months or both if applicable
- **Purpose**
  - Purchase, refinance, construction, home equity
- **Product**
  - ARM, step rate, fixed rate
  - If any features on the loan product will change, this must be included in product description, including:
    - Negative amortization, interest only, step payment, balloon payment, or seasonal payment
      - Duration of this payment feature must be disclosed
        - Example: If the first year of payments cover interest only and will not be applied towards the principal, this type loan description would be disclosed as a *One-Year Interest Only*
- **Loan type**
  - Conventional, FHA, VA, etc.
- **Lender's loan identification number**
  - Identifies the transaction
- **Rate lock**
  - If yes, disclose date, time and time zone when the lock periods ends
  - Also, the date, time and time zone when the estimated closing costs will expire
- **Loan Terms Section**
  - Loan amount - Use whole dollars
  - Initial interest rate
  - Initial monthly principal and interest
  - Information on the prepayment penalty
    - Answer "Yes" or "No" in this column
    - If prepayment penalty applies,
      - Include maximum amount of penalty
      - Date the penalty ends
  - If the loan has a balloon payment
    - Answer "Yes" or "No" in this column
      - If yes, supply information on
        - Maximum amount of balloon payment
        - Due date of balloon payment
- **Can this amount increase after closing?**
  - If yes, include applicable information in regards to adjustments in the
    - Loan amount
    - Interest rate
    - Monthly principal and interest
  - If no adjustments, disclose "No"
- **Projected Payments** will show estimates of payments made during the life of the loan. Must include:
  - Principal and interest, mortgage insurance, estimated escrows, and estimates of the total monthly payment

- Also must include an estimate of taxes, insurance, and assessments regardless if they are paid through an escrow account
    - Use a periodic table, the sample Loan Estimate demonstrates the payments in years 1-5, 6-8, 9-11, and 12-30
      - Should disclose if, and how payments will change during these different phases
        - Range of payments are for principal and interest only. Mortgage insurance and escrows are not included
  - **Estimated Total Monthly Payment**
    - Each column will show the amount of principal and interest, mortgage insurance, and estimated escrow
  - **Estimated Taxes, Insurance, & Assessments**
    - Must disclose, even if an escrow account will not apply
    - "Amount can increase over time" statement will be included in this section
  - **Costs at Closing**
    - **Estimated Closing Costs** are detailed on page 2 of the Loan Estimate
    - **Estimated Cash to Close** will also be computed on page 2 of the Loan Estimate
- **Page 2 - Closing Cost Details**
  - **Loan Costs**
    - **A. Origination Charges**
      - Lists items the consumer will pay to each creditor and loan originator
        - Example: Points, application fee, underwriting fee
    - **B. Services You Cannot Shop For**
      - May include: Appraisal fee, credit report fee, flood determination fee, tax monitoring fee, lender's attorney fee, upfront mortgage insurance fee
    - **C. Services You Can Shop For**
      - These are services the consumer can shop for and will pay for at settlement
      - Examples: Pest inspection fee, survey fee, title insurance binder, lender's title policy, title search, examination of title
        - Cannot disclose more than 14 Services You Can Shop For. If more, disclose the total amount that exceed 13 with the label "Additional Charges". If needed, an addendum can be added to the Loan Estimate
    - **D. Total Loan Costs (A+B+C)**
      - Total of these columns
  - **Other Costs**
    - **E. Taxes and Other Government Fees**
      - This section will include recording fees and other taxes and transfer taxes
    - **F. Prepays**
      - These are items paid by the consumer in advance of the first scheduled payment
        - Include homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, property taxes
        - A maximum of three additional items can be added
    - **G. Initial Escrow Payment at Closing**
      - Items the consumer will place in a reserve or escrow account for homeowner's insurance, mortgage insurance, property taxes
      - Show the amount escrowed per month for each item, number of months collected, and total amount paid
    - **H. Other**
      - Items the borrower is likely to pay or has contracted with a person to pay
        - Such as, owner's title insurance, credit life insurance, home owner's warranty
    - **I. Total Other Costs**
      - Total of columns E, F, G and H
    - **J. Total Closing Costs**
      - The sum of Total Loan Costs (D), Total Other Costs (I) and Lender Credits
    - **Calculating Cash to Close**
      - This section will disclose the total amount the borrower needs to close. Consists of
        - Total Closing Costs - From Section J
        - Closing costs financed
        - Borrower down payment
        - Deposit - If this is a purchase transaction
        - Funds for Borrower

- Seller Credits - these are items paid for by the seller
- Adjustments and Other Credits
- **Estimated Cash to Close**
  - Sum of the above seven items
- **Page 3 - Additional Information About This Loan**
  - First section will be contact information
    - Name, NMLS ID, License ID for the creditor and the mortgage broker
    - And name, email, phone number of the individual loan originator
      - Individual loan originator will be the primary contact for the borrower
  - **Comparisons**
    - Must include the statement, "Use these measures to compare this loan with other loans."
    - This sections discloses
      - Loan costs on this loan in five years
        - Total principal, interest, mortgage insurance, and loan costs
        - Principal you will have paid off
      - The Annual Percentage Rate (APR)
      - Total Interest Percentage (TIP)
        - Total interest paid over the life of the loan shown as a percentage of the loan amount
    - **Other Considerations**
      - Lists details about the
        - Appraisal
        - Assumption
        - Homeowner's Insurance
        - Late Payment
        - Refinance
        - Servicing
    - **Confirm Receipt**
      - Borrower is not required to sign the Loan Estimate
      - Lender will have two options:
        - If a line is included for the borrower's signature, the following must be disclosed
          - "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form."
          - If no line is included, the following must be disclosed
            - "You do not have to accept this loan because you have received this form or signed a loan application."

**The Closing Disclosure Document Regulation Z, 12 CFR §1026.38 (all)**

- **The Loan Estimate sample is from the Consumer Financial Protection Bureau and is an example of a fixed rate mortgage**
- **See sample at [http://files.consumerfinance.gov/f/201311\\_cfpb\\_kbyo\\_closing-disclosure.pdf](http://files.consumerfinance.gov/f/201311_cfpb_kbyo_closing-disclosure.pdf)**

**Page One**

- **Title of the form** - "Closing Disclosure"
  - The wording will include: "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate."
- Closing Information will include the following:
  - **Date issued**
    - This is the date the Closing Disclosure is delivered to the borrower
  - **Closing Date** - Date of Consummation
  - **Disbursement Date** - Anticipated date of disbursement of funds
  - **Settlement Agent** - name of closing agent
  - **File #** - closing agent's file number
  - **Property** - Address or location of property, includes zip code



- **Sales Price**
    - If purchase - Contract sales price
    - If no seller - Appraised value
  - **Transaction Information**
    - **Borrower** - name, mailing address
    - **Seller** - if applicable - name, mailing address
    - **Lender** - Name of lender
  - **Loan Information**
  - **Loan term**
    - Use years or months or both if applicable
    - **Purpose**
      - Purchase, refinance, construction, home equity
    - **Product**
      - ARM, step rate, fixed rate
      - If any features on the loan product will change, this must be included in product description, including:
        - Negative amortization, interest only, step payment, balloon payment, or seasonal payment
          - Duration of this payment feature must be disclosed
            - Example: If the first year of payments cover interest only and will not be applied towards the principal, this type loan description would be disclosed as a *One-Year Interest Only*
    - **Loan type**
      - Conventional, FHA, VA, etc.
    - **Loan ID number**
      - Identifies the transaction
- Note: The Loan Term, Purpose, Product Loan Type and Loan ID number should be updated, if needed, to reflect information regarding the transaction at consummation
  - **MIC#**
    - Mortgage Insurance Case Number
  - **Loan Terms Section**
    - **Loan amount** - Use whole dollars
    - **Interest rate** - rate for this loan
    - **Monthly Principal and Interest**
    - **Prepayment Penalty** - Information on the prepayment penalty, if it applies
      - If prepayment penalty applies,
        - Include maximum amount of penalty
        - Date the penalty ends
    - **Balloon Payment** - If the loan has a balloon payment
      - Maximum amount of balloon payment
      - Due date of balloon payment
  - **Can this amount increase after closing?**
    - If yes, include applicable information in regards to adjustments in the
      - Loan amount
      - Interest rate
      - Monthly principal and interest
      - Prepayment Penalty
      - Balloon Payment
        - If no adjustments, disclose "No"
  - **Projected Payments** will show estimates of payments made during the life of the loan. Must include:
    - Principal and interest, mortgage insurance, estimated escrows, and estimates of the total monthly payment
    - Also must include an estimate of taxes, insurance, and assessments regardless if they are paid through an escrow account
    - Use a periodic table, the sample Closing Disclosure demonstrates the payments in years 1-7 and 8-30
      - Should disclose if, and how, payments will change during these different phases
        - Range of payments are for principal and interest only
          - Mortgage insurance and escrows are not included

- **Estimated Total Monthly Payment**
  - Each column will show the amount of principal and interest, mortgage insurance, and estimated escrow
- **Estimated Taxes, Insurance, & Assessments**
  - Must disclose, even if an escrow account will not apply
  - "Amount can increase over time" statement will be included in this section
- **Costs at Closing**
  - **Estimated Closing Costs** are detailed on page 2 of the Loan Estimate
    - Other Costs Section
      - Under Total Closing Costs
        - This section includes amounts from
          - Total Loan Costs - Section D
          - Total Other Costs - Section I
          - Lender Credits - Section J
- **Cash to Close**
  - Estimated cash the borrower will pay or receive at the closing
    - Same as page three of the Closing Disclosure
      - Under heading Cash to Close in the Calculating Cash to Close section, top of page three

### Page Two Closing Costs Details

- **Loan Costs**
- Note - Items in the Loan Costs and Other Costs sections can be expanded and deleted for space control - Although, if an item is required to be disclosed it may not be deleted, even though it is not applicable. As an example, "Points" located in the Origination Section must remain regardless if there is a charge or this item.

Loan Costs and Other Costs are allowed to be disclosed on separate pages of the Closing Disclosure. The pages will be numbered Page 2a and 2b.

There are items in the Loan Costs section that will be somewhat the same as disclosed on the Loan Estimate. You can update some items to reflect the terms and details of the loan at consummation, unless specified below.

This page will consist of five columns for

- Borrower-Paid
  - At Closing
  - Before Closing
- Seller- Paid
  - At Closing
  - Before Closing
- Paid by Others
- **A. Origination Charges**
  - Charges for making this loan
    - Points are shown in dollar amount and percentage of the loan amount
  - Itemization and a subtotal of each amount paid to each creditor and loan originator
- **B. Services Borrower Did Not Shop For**
  - Shows dollar amount and a list of items the borrower did not shop for
    - Appraisal Fee, Credit Report Fee, Flood Determination Fee, Flood Monitoring Fee, Tax Monitoring Fee, Tax Status Research Fee
- **C. Services Borrower Did Shop For**
  - Shows dollar amount and a list of items the borrower shopped for
    - Pet inspection fee, Survey Fee, Title Insurance Binder, Lender's Title Insurance, Settlement Agent's Fee, Title Search
- **D. Total Loan Costs**
  - Total of A, B, and C of the Borrower-Paid section

### Other Costs

- **E. Taxes and Other Government Fees**
  - Paid to state and local government agencies
    - Transfer Taxes section will itemize the amount paid by the borrower and the seller

- **F. Prepays**
  - These are items paid by the consumer in advance of the first scheduled payment
    - Include homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, property taxes
    - A maximum of three additional items can be added
- **G. Initial Escrow Payment at Closing**
  - Items the consumer will place in a reserve or escrow account for homeowner's insurance, mortgage insurance, property taxes
  - Show the amount escrowed per month for each item, number of months collected, and total amount paid
- **H. Other**
  - Includes costs incurred by the borrower or seller, but were not required to be part of the Loan Estimate
    - Home Inspection Fee, Home Owner's Warranty Fee
- **I. Total Other Costs**
  - Total of columns E, F, G and H
- **J. Total Closing Costs**
  - Borrower-Paid - All closing costs added with the Lender Credit amount subtracted from this total
    - Lender Credits are disclosed as Borrower-Paid At Closing

### Page Three

#### Calculating Cash to Close

Includes this notice, "Use this table to see what has changed from your Loan Estimate."

- Three columns
  - Amount disclosed on Loan Estimate
  - Final amount
  - And a "Did this change?" section
    - If yes, give a description of where the changed amounts can be found within the Closing Disclosure
- This section includes information regarding
  - Total Closing Costs
    - Same as page two of Closing Disclosure
      - If increase exceeds the legal limits, show in "Did this change?" column
  - Closing Costs Paid Before Closing
  - Down Payment/Funds from Borrower
  - Deposit
  - Funds for Borrower
  - Seller Credits
  - Adjustments and Other Credits

#### Summaries of Transactions

Includes the notice, "Use this table to see a summary of your transaction."

- Used for purchase transactions
- **K. Due from Borrower at Closing**
  - Sales price of property, sales price of any personal property, closing costs paid by seller, adjustments and adjustment for items paid in advance by the seller
- **L. Paid Already by or on Behalf of Borrower at Closing**
  - Deposit - paid into a trust account by the borrower
  - Loan amount
  - Existing Loan(s) Assumed or Taken Subject to
    - List any loans the borrower is assuming in this transaction
  - Seller Credit
    - Credit to the borrower from the seller
  - Other Credits
    - From other entity other than the borrower or the seller
  - Adjustments for Items Unpaid by Seller
    - Due to borrower if paid in arrears
      - Example taxes on the property are paid on an annual basis
- **Calculation**
  - Total Due from Borrower at Closing
    - Amount taken from Section K
  - Total Paid Already by or on Behalf of Borrower at Closing
    - Amount taken from Section L

- Cash to Close
  - If borrower owes money check the "From" box
  - If borrower is receiving money check the "To" box
- **Seller's Transaction**
  - **M. Due to Seller at Closing**
    - Will include sales price of the property being purchase and any other personal property included in the sale
    - Adjustments for Items Paid by Seller in Advance
      - Includes any adjustment for property taxes, assessments, Home Owner Association Dues that will be credited to the seller
  - **N. Due from Seller at Closing**
    - Items seller will pay for at the closing include
      - Excess Deposit
      - Closing Costs Paid at Closing from Section J of the Closing Disclosure
      - Existing Loan(s) Assumed or Taken Subject to
      - Payoff of First Mortgage Loan
      - Payoff of Second Mortgage Loan
      - Seller Credit
    - Adjustments for Items Unpaid by Seller
      - Includes taxes and assessments
- **Calculation**
  - Total Due from Seller at Closing
    - Amount taken from Section M
  - Total Paid Already by or on Behalf of Seller at Closing
    - Amount taken from Section N
  - Cash to Close
    - If seller owes money check the "From" box
    - If seller is receiving money check the "To" box

#### Page 4 Additional Information About This Loan

##### Loan Disclosures

- **Assumption**
  - If the borrower sells or transfer the property, can another person assume the original terms of this loan?
- **Demand Feature**
  - Is there a demand feature that can require an early repayment of this loan?
- **Late Payment**
  - Terms of the late payment feature will include amount of time that passes before a fee will be assessed and how fee is calculated
- **Negative Amortization (increase in Loan Amount)**
  - Will regular payments pay all of the interest due for each month?
- **Partial Payments**
  - Will the lender accept partial payments? If so, in what increments?
- **Security Interest**
  - Description of the property
- **Escrow Account**
  - Lets borrower know whether or not this loan includes escrow payments
  - If included, chart will show
    - Amount of escrow property costs over the first year, listing costs paid by the account
    - Amount of non-escrow property costs over the first year, listing costs that will not be paid by the escrow account
    - Initial escrow payment
    - Monthly escrow payment
- Two notices included on this page:
  - "You may lose this property if you do not make your payments or satisfy other obligations for this loan."
  - "In the future,  
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add

the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own."

## Page 5

- **Loan Calculations**
  - **Total Payments** - this is the sum of all the borrower will have paid after all payments of principal, interest, mortgage insurance, and loan costs have been paid
  - **Finance Charge** - shows what the loan amount will cost in finance charges
  - **Amount Financed** - Loan amount available once the upfront finance charge has been paid
  - **Annual Percentage Rate** - What the costs for this loan will cost expressed as a rate
    - This is not to be confused with the actual interest rate
  - **Total Interest Percentage (TIP)** - Total amount of interest paid over the life of the loan as a percentage of the loan amount
- **Other Disclosures**
  - **Appraisal**
    - Discusses the borrower's rights in relation to the appraisal
  - **Contract Details**
    - Informs the borrower the note and security instrument have information regarding
      - What will happen if the borrower fails to make payments
      - What is default
      - Situations where the lender can require early repayment of the loan
      - Rules for making payments before they are due
  - **Liability After Foreclosure**
    - Statement letting borrower know if State law protects them from liability for any unpaid balance
  - **Refinance**
    - Information regarding the borrower's ability to refinance this loan
  - **Tax Deductions**
    - Information about deductions for interest
      - If you borrow more than the property's worth, interest on the loan amount above the property's fair market value will not be deductible
  - **Questions**
    - Website information on the CFPB
      - If the borrower has questions, wants to make a complaint, or contact the Consumer Financial Protect Bureau
  - **Contact Information**
    - Provides contact information on the
      - Lender, Mortgage Broker, Real Estate Broker for the Buyer, Real Estate Broker for the Seller, and Settlement Agent
      - Information includes
        - Name, address, NMLS ID, ST License ID, contact name, contact's NMLS ID and ST License ID, email, and phone
  - **Confirm Receipt**
    - Borrower is not required to sign the Closing Disclosure
    - Lender will have two options:
      - If a line is included for the borrower's signature, the following must be disclosed
        - "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form."
        - If no line is included, the following must be disclosed
        - "You do not have to accept this loan because you have received this form or signed a loan application."

## Explanation of Documents

Deed - Transfers title of real property from one owner to the next

### Mortgage –

- Lien on property
- Entitles the lender to take possession of property by foreclosure in the event of default

### Deed of Trust –

- Used in place of a mortgage in some states
- Transfers title to the trustee until loan is paid in full
- If borrower defaults, trustee can sell the property without legal proceedings

### Mortgage Servicing Disclosure Statement –

- Lets the borrower know if the lender will service the loan or transfer it to another lender

### Initial Escrow Statement –

- Lists estimated taxes, insurance premiums, etc., to be paid from the escrow account
- Discloses the escrow payment and any required cushion

*An annual escrow statement must be provided*

## Funding

**Funding the Loan** will occur when lender releases buyer's loan funds to closing agent after documents have been executed and all conditions are satisfied.

*Closing agent will send closing documents to lender for review. Once lender approves closing documents, funds are disbursed and wired to the closing agent. Closing agent will distribute funds to appropriate parties.*

### Final steps:

- Closing agent records:
  - Deed
  - Mortgage or deed of trust
  - Lien releases
  - Any other documents
- Title company issues policies
- Copies of all documents are provided to lender and buyer

## LESSON SUMMARY

### Title and Title Insurance

- Owner's Title Policy - Optional
  - Insures owner against unexpected problems with the title on their property
  - Protects against title defects that:
    - Could not be found
    - Were missed during the title search
  - Some items it will not cover:
    - Violations of building and zoning ordinances
    - Restrictive covenants limiting how property can be used
    - Any conflicts with boundary lines, encroachments, etc.
  - Policy is issued in the amount of the purchase price
  - This is a one-time fee
- Lender's Title Policy
  - Insures the lender against unexpected problems with title on the borrower's property. This policy protects their interest in the collateral secured by the real estate. Also guarantees the lender has a legitimate first lien against the property.
    - Protects the lender
    - Paid by borrower
    - One-time fee

- Closing agent
  - Closing Agent – In many areas, closings are handled through escrow.
  - Escrow - neutral third party who holds money and documents for buyer and seller
  - Closing agent disburses purchase price and delivers deed when conditions in agreement are satisfied
  - Closing agent may be an independent escrow agent, employee of the lender, title company or a lawyer.

### **Settlement/Closing Agent**

- Closing agent
  - Closing Agent – Closings may be handled through escrow.
  - Escrow - neutral 3<sup>rd</sup> party who holds money and documents for buyer and seller
  - Closing agent disburses purchase price and delivers deed when conditions in agreement are satisfied
  - Closing agent may be an independent escrow agent, lender employee, title company, lawyer or real estate broker
- Closing process
  - Closing agent responsible for handling details of closing, which includes:
    - Clearing liens from title
    - Establishing condition of title
    - Inspections and repairs
    - Buyer's funds for closing
    - Preparing documents and recording
- Clearing Liens From Title
  - Any liens that would have higher priority than the new mortgage or deed of trust must be removed.
  - Does not include:
    - Property tax liens
    - Special assessment liens
- Inspections and Repairs
  - Lenders often require inspections and certain repairs made before closing. These might include: pest control inspection, soil percolation test and/or flood hazard inspection.
- Documents and Buyer's Funds
  - Once approved, lender forwards loan documents to closing agent
  - Buyer deposits his part of transaction, such as down payment and closing costs into escrow, and signs loan documents
- Impound Account
  - Lenders often require buyers to make a deposit into an impound account at closing. An impound account ensures that taxes, hazard insurance, and mortgage insurance are paid on time.
- Hazard Insurance
  - Protects property owner against damage caused by fires, severe storms, earthquakes and other natural disaster
  - Usually maintained along with mortgage payments/escrow account
- Flood Insurance
  - If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan.
  - Usually maintained along with mortgage payments/escrow account
- Interim interest
  - Buyer will also pay interim interest (prepaid interest) at closing
  - Buyer's first monthly mortgage payment is generally not due on first day of month immediately after closing, but next month, therefore:
    - Interest on mortgage is paid in arrears
      - Arrears means that interest accruing during month is paid at end of month

### **Explanation of Documents**

- Deed: Transfers title of real property from one owner to the next
- Mortgage
  - Lien on property
  - Entitles the lender to take possession of property by foreclosure in the event of default
- Deed of trust
  - Used in place of a mortgage in some states
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## **Funding**

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- Final steps
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    - Deed
    - Mortgage or deed of trust
    - Lien releases
  - Any other documents
  - Title company issues policies
  - Copies of all documents are provided to lender and buyer





This next section deals with California law.

We'll be primarily looking at:

- The California Financing Law
- The California Residential Mortgage Lending Act

This segment is structured with a unique industry perspective –that provides practical advice along with a highlight of the most relevant laws to your job. The laws and policies that regulate the mortgage industry are something you need to know and observe. Due to time limitations we can't possibly cover **all** the laws that will affect you, so we'll discuss those most critical to your business.

If you want to learn about laws affecting you and other areas of the mortgage industry, it's easy enough for you to read the law for yourself. In fact, you'll find in our resources section a downloadable PDF that has Division 9 and Division 20 of the California Financial Code (CFC.) Incidentally, Division 9 is the California Financing Law (CFL), and Division 20 is the California Residential Mortgage Lending Act (CRMLA). I'll even go a little further and say that it's really in your best interest to download the PDF and read Division 9 and 20 for yourself, including the parts that don't apply specifically to you.

There's a number of reasons why you'll benefit from reading Divisions 9 and 20:

- 1) It will provide you with a better understanding of the laws your employer must deal with, and provide insight into the governing regulations for the entire mortgage industry.
- 2) You'll have knowledge that most of your competition doesn't have since few mortgage professionals read the laws of their profession. You can use this to your advantage by occasionally quoting a law. You can further help yourself by putting the PDFs in a small binder with a label that says, "Mortgage Laws." Be sure to place the binder where your clients can see it. You'll be passively selling yourself using a method called PRIMING.

I think you'll agree the third reason is the most important, and I can best illustrate it by telling you a story as conveyed to me by a friend who has spent 25 years in the real estate and mortgage industry.

In our culture it's generally not a good idea to offer unsolicited advice. Yet, before getting into the meat of this course I want to take a moment to provide a little information that may help you to remain in compliance with the laws that govern your actions as a Mortgage Loan Originator.

My friend – I'll call him Bill – was relatively new to the mortgage industry when he met an industry veteran who began telling Bill about all the easy ways to make money in mortgage origination. When he finished detailing his somewhat unusual way of producing the extra revenue Bill said, "Is that actually legal?" The veteran originator walked Bill through the special program and explained why it remained within the letter of the law. Then Bill asked, "But is it ethical? Do you think it's the right way to treat your customers?" The response indicated that most borrowers gained back the extra money extracted by the program when they sold the home, so it was not really cheating anyone. Bill wasn't sold on the idea, and felt it wasn't being forthright with the clients, so he elected to remain clear of the scheme.

The more Bill thought about the plan, the more he was convinced it just wasn't the right thing to do – regardless of whether or not it was legal. **And that was one of the smartest decisions Bill has ever made, because...**

3 years later when Bill was asking a mutual friend how the Loan Originator was doing. She said, “Oh, didn’t you hear? He’s serving a five year sentence in the state penitentiary for mortgage fraud.”

Bill was stunned. His scheme really did appear to be legal, but it was clearly not ethical. As a small single person company he didn’t make much of a blip on the enforcement radar. He never thought for a moment that he would create major legal issues for himself – let alone spend five years in the state penitentiary.

Something that seemed legal – even though it “felt” wrong – and something he never thought would catch the attention of any enforcement agency was a life changing experience for all involved.

In just a minute I’ll show you why operating within the “letter of the law” is **not** sufficient if you want to stay out of trouble ... and out of the penitentiary.

Although the state wasn’t California, the laws that governed mortgage lending began with the same sentences as the laws that govern California; I strongly suggest you take them very seriously.

But first I want to make one more appeal for you to visit our Resources section for this course and download the items you’ll find. Then print them, and have them in a binder so you can read them and refer to them occasionally. I know it sounds like a chore, but there are two specific reasons it will provide benefit to you.

Knowing this information will make you a better originator, and if you occasionally pull the binder off the shelf and show your clients a specific law that may be relevant to a discussion you’re having with them, it will substantially add to your credibility. They will appreciate working with someone that appears so diligent. If your clients are still in the shopping phase, you’ve just significantly enhanced your competitiveness. In addition, you’ve provided something that makes it easy for those clients to recommend you to others.

The other reason for reading the law is that you may learn something surprising. The industry relies heavily on word-of-mouth, and research very clearly demonstrates such a reliance results in misconceptions and infractions. The good news is that **usually** the law is **less restrictive** than the word-of-mouth suggests. But there are times you’ll find something you didn’t know about – something that could cause problems for you in certain circumstances.

The documents you’ll find in the Resource section include:

- The California Financing Law
- The California Residential Mortgage Lenders Act
- A listing of websites for the previous items along with other helpful links.

Now let’s turn our attention to the actual laws we’ve been talking about. We’ll begin with some of the critical portions of the California Financial Code, Division 9, known as **the California Financing Law, or CFL**.

And one more helpful comment before we move on. You’ll be presented with questions and multiple choice answers throughout this course and at the end. Not all of the questions are covered in the course itself. I know that sounds strange, but there are specific reasons we’ve done that.

First, when you take your NMLS test there will inevitably be questions that are new to you. It helps to have a little practice trying to figure out the correct answer just with the use of logic, common sense, and a synthesis of everything you’ve learned so far.

Second, the nature of the question gives them a high probability of being on your test, so we’re exposing you to what you may see later.

## **CALIFORNIA FINANCING LAW**

We’ll start at the very beginning because the first few lines contain the most critical concept you need to understand about mortgage law – and adhering to the concept would have kept Bill’s friend out of the state penitentiary

The text of the law begins with the **defined purpose** of the law, and it's an *overarching concept* that effectively creates an **unwritten law** if it becomes necessary to exercise the enforcement of the unwritten law to **serve the defined purpose** of the law.

## Chapter 1, Article 1, Section 22001

(a) This division shall be **liberally construed and applied** to promote its underlying purposes and policies, which are:

1. (1) To ensure an adequate supply of credit to borrowers in this state.
2. (2) To simplify, clarify, and modernize the law governing loans made by finance lenders.
3. (3) To foster competition among finance lenders.
4. (4) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.
5. (5) To permit and encourage the development of fair and economically sound lending practices.
6. (6) To encourage and foster a sound economic climate in this state.

Let's look at the opening sentence again. Did you catch the words "liberally construed and applied" ? Do you understand what that really means? More specifically, do you understand what effect it has on you? Remember our cautionary tale from the beginning of this lesson?

**Never forget** that the words "liberally construed and applied to promote its underlying purposes"

When a law or policy is to be "liberally construed and applied" it is specifically telling the enforcement agencies and systems that it desires the "underlying purposes" of the code to trump any situation where the **intent** of the law is circumvented or violated regardless of whether or not an actual legal violation exists. That's admittedly a bit of an oversimplification, but it's substantially correct.

So be very careful when trying to devise schemes that may appear legal even though a judge and/or jury may disagree when they consider the words "liberally construed and applied."

For example, even if you complied with everything contained in this law, but you did something that hindered competition among finance lenders, you could be held in violation of the law due to its stated purpose "*to foster competition among finance lenders.*"

Any idea or strategy that seems a bit irregular should be evaluated with your eyes wide open to the words "**liberally construed.**" If the idea is contrary to the law's purpose or an obvious attempt to circumvent the law you could be in for some difficult times.

Admittedly, you'll see others doing things that are contrary to the law's purpose, and that makes it easy to justify doing it yourself. Don't ever cross the line from legal to illegal *even though you will see others do it routinely!* Don't even step on the line or ride the fence.

Just remember the story I told you at the beginning of the course where a Mortgage Loan Originator was sentenced to five years in the state penitentiary. Just as he was used as an example to the mortgage origination community, you could become the same kind of example in California. Borrowing a line from Nancy Reagan, "**Just say no!**"

While it sounds crazy, someone could – according to law – assert that your customer service and competitive fee schedule is so superior to the rest of the market that you are acting contrary to the law's intention "*to encourage and foster a sound economic climate.*" If you were so competitive that everyone came to you and your competition was losing substantial business as a result, the competition could likely make a claim under this law that you are in violation of its purposes and policies. It's not probable they would get very far, but it may result in an audit to ensure you aren't doing something illegal that enables you to provide such superior service and pricing. Or, a sympathetic judge may allow the claim to go forward.

I'm not trying to scare you away from the industry, and I suspect most will say what I have just suggested is absurd. It certainly **sounds** absurd. But after 25 years in the mortgage and real estate industries, and 37 years in general business, I can attest to far more ludicrous situations that have occurred, and sometimes the most ridiculous accusations end up in

a sympathetic court, and people who have worked very hard to bring great value to their clients end up paying a fine and substantial legal fees as a reward for their excellence.

There is really no way to be absolutely insulated from such an unfair and counter-productive occurrence. It's *not likely* it will happen to you, but it *can* happen. So be careful.

One of the best defenses against unfair legal harassment is developing a history of good service to clients and developing a good reputation among the people and businesses you work with. It's almost like being back in high school. A long history of good behavior goes a long way in your defense if you should ever be accused of doing something unacceptable.

I think I've made my point, so let's move on and look at some other relevant sections of the California Finance Lenders Law.

**Numerous definitions are provided in the law, but we've listed a few of the more pertinent ones you need to know – or may see on a test:**

**BROKER** - includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender. [Chapter 1, Article 1, section 22004]

**COMMISSIONER** - means the Commissioner of Business Oversight. [Chapter 1, Article 1, section 22005] **LICENSEE** - means any finance lender or broker who receives a license in accordance with this division. [Chapter 1,

Article 1, section 22007]

**PERSON** - means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government. [Chapter 1, Article 1, section 22008]

**FINANCE LENDER** - includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission.

It is the intent of the Legislature that the definition of finance lender shall be interpreted to include a personal property broker as referenced in Section 1 of Article XV of the California Constitution. [Chapter 1, Article 1, section 22009]

**FINANCE LENDER and BROKER** - do *not* include employees regularly employed at the location specified in the license of the finance lender or broker, except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt. [Chapter 1, Article 1, section 22010]

**MORTGAGE LOAN ORIGINATOR** - means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. [Chapter 1, Article 1, section 22013 (a)]

**LOAN PROCESSORS, UNDERWRITERS, INDEPENDENT CONTRACTORS.** [Chapter 1, Article 1, section 22014]

(a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be required to be licensed as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license under this division. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

**There's a notable number of exceptions to whom the law applies:**

**A MORTGAGE LOAN ORIGINATOR DOES NOT INCLUDE ANY OF THE FOLLOWING:** [Chapter 1, Article 1, section 22013 (b)]

- (1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of Section 22014. The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- (2) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.
- (3) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.
- (4) An individual licensed as a mortgage loan originator pursuant to the provisions of Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.
- (5) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency
- (6) (A) An employee of a bona fide nonprofit organization who exclusively originates residential mortgage loans for a bona fide nonprofit organization, and who acts as a mortgage loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.  
(B) To qualify for the exemption under this paragraph, the bona fide nonprofit organization under this paragraph must register with the department on a form prescribed by the commissioner.

The array of exemptions and the required documentation is extensive. Take a look at the actual law if this may be relevant or of interest to you.

### **Chapter 1, Article 2, section 22050**

(a) This division does not apply to any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, community advantage lenders, California business and industrial development corporations when acting under federal law or other state authority, or licensed pawnbrokers when acting under the authority of that license.

"Community advantage lender" means an entity authorized by the United States Small Business Administration to deliver community advantage loans.

(b) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit, and shall not apply to a person holding a valid license issued pursuant to Section 23005 of the Financial Code when acting under the authority of that license.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a broker-dealer acting pursuant to a certificate then in effect and issued pursuant to Section 25211 of the Corporations Code.

(e) This division does not apply to any person who makes five or fewer loans in a 12-month period, these loans are commercial loans as defined in Section 22502, and the loans are incidental to the business of the person relying upon the exemption.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

It is important to note that according to California Financial Code §22050.5, a new exemption to the law was put into place starting January 2017. The exemption is for any person that makes one loan in a 12-month period if the loan is a commercial loan. The new *de minimus* exemption will remain in effect until January 1, 2022.

There are a couple specific exemptions worth mentioning here:

The division (which means Division 9 of the California Finance Code) does not apply to any loan that is made or arranged by any person licensed as a real estate broker by the state and secured by a lien on real property, or to any licensed real estate broker when making such a loan. A licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a license under this division. [Chapter 1, Article 2, Section 22057]

That's really a long "legally sounding" way of saying that real estate brokers with the license to lend through the California Bureau of Real Estate are not subject to the California Finance Lenders Law. I don't know why they couldn't have just said that in simple terms!

Another section worthy of mentioning specifies restrictions on brokering loans, and it has the same lengthy wording.

This division (again, it refers to Division 9) does not apply to any loan that is made or arranged by any person licensed as a real estate broker by the state and secured by a lien on real property, or to any licensed real estate broker when making such a loan. A licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a license under this division. [Chapter 1, Article 2, Section 22059]

This division does *not* apply to a loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license. [Chapter 1, Article 2, Section 22060]

### **Chapter 1, Article 3, Section 22100**

(a) No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.

(b) Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 20 (commencing with Section 50000), or has first obtained a license endorsement from the Commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(c) A finance lender or broker shall not employ a mortgage loan originator whose license or license endorsement has lapsed.

(d) A finance lender or broker may not make or broker a residential mortgage loan unless that loan is offered by, negotiated by, or applied for through a licensed mortgage loan originator.

(e) Every licensee engaged in the business of making or brokering residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(f) An individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of this division and any rules promulgated by the commissioner under this chapter.

(g) A registered mortgage loan originator, as defined in subdivision (c) of Section 22013, is exempt from licensure under this section when he or she is employed by:

(1) A depository institution.

(2) A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency.

(3) An institution regulated by the Farm Credit Administration.

### **Chapter 1, Article 3, Section 22101**

(a) An application for a license as a finance lender or broker under this division shall be in the form and contain the information that the commissioner may by rule or order require and shall be filed upon payment of the fee specified in Section 22103.

(b) Notwithstanding any other law, an applicant who does not currently hold a license as a finance lender or broker under this division shall furnish, with his or her application, a full set of fingerprints and related information for purposes of the commissioner conducting a criminal history record check. The commissioner shall obtain and receive criminal history information from the Department of Justice and the Federal Bureau of Investigation pursuant to Section 22101.5.

(c) This section shall not be construed to prevent a licensee from engaging in the business of a finance lender through a subsidiary corporation if the subsidiary corporation is licensed pursuant to this division.

(d) For purposes of this section, "subsidiary corporation" means a corporation that is wholly owned by a licensee.

(e) A new application shall not be required for a change in the address of an existing location previously licensed under this division. However, the licensee shall comply with the requirements of Section 22153.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require an application to be made through the Nationwide Mortgage Licensing System and Registry, and may require fees, fingerprints, financial statements, supporting documents, changes of address, and any other information, and amendments or modifications thereto, to be submitted in the same manner.

(g) Notwithstanding any other law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. This section does not require the commissioner to accept electronic records or electronic signatures.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Electronic record" means an initial license application, or material modification of that license application, and any other record created, generated, sent, communicated, received, or stored by electronic means. "Electronic records" also includes, but is not limited to, all of the following:

(A) An application, amendment, supplement, and exhibit, filed for any license, consent, or other authority.

(B) A financial statement, report, or advertising.

(C) An order, license, consent, or other authority.

(D) A notice of public hearing, accusation, and statement of issues in connection with any application, license, consent, or other authority.

(E) A proposed decision of a hearing officer and a decision of the commissioner.

(F) The transcripts of a hearing and correspondence between a party and the commissioner directly relating to the record.

(G) A release, newsletter, interpretive opinion, determination, or specific ruling.

(H) Correspondence between a party and the commissioner directly relating to any document listed in subparagraphs (A) to (G), inclusive.

(2) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(i) The Legislature finds and declares that the Department of Business Oversight has continuously implemented methods to accept records filed electronically, and is encouraged to continue to expand its use of electronic filings to the extent feasible, as budget, resources, and equipment are made available to accomplish that goal.

**Chapter 1, Article 3, Section 22104 specifies net worth requirements for *finance lenders and brokers*.** Note that a Mortgage Loan Originator licensed under the DBO is not considered a finance lender or a broker, though the MLO may work for a person or organization with such a license. Here's the law:

(a) The applicant shall file with the application for a finance lender or broker license financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000). Except as provided in subdivisions (b) and (c), a licensee shall maintain a net worth of at least twenty-five thousand dollars (\$25,000) at all times.

(b) A licensed finance lender or broker, that employs one or more mortgage loan originators and that makes residential mortgage loans, shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(c) A licensed finance broker, that employs one or more mortgage loan originators and that arranges, but does not make, residential mortgage loans, shall continuously maintain a minimum net worth of at least fifty thousand dollars (\$50,000).

(d) The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth, as are necessary to accomplish the purposes of this division and comply with the SAFE Act.

### **Chapter 1, Article 3, Section 22109**

(a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a finance lender or broker license for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(4) The applicant employs a mortgage loan originator who is not licensed, or has not initiated an application to become licensed, pursuant to this division.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.



(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Chapter 1, Article 3, Section 22109.1**

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

1. (1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.
2. (2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

3. (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.
4. (4) The applicant has completed the pre-licensing education requirement described in Section 22109.2.
5. (5) The applicant has passed a written test that meets the test requirement described in Section 22109.3.
6. (6) The applicant is employed by, and subject to the supervision of, a finance lender or broker that has obtained a license from the commissioner pursuant to this division.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

### **Chapter 1, Article 3, Section 22109.2**

(a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

1. (1) Three hours of instruction on federal law and regulations.
2. (2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
3. (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
4. (4) Two hours of training related to relevant California law and regulations.

[It is important to note that the SAFE Act and the California Department of Business Oversight requires state- licensed mortgage loan originators to complete 20 hours of NMLS pre-licensure education courses which includes all of the above. In addition to the list above, 10 hours of undefined instruction on mortgage origination is also required]

(b) For purposes of subdivision (a), pre-licensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be accepted as credit toward completion of pre-licensing education requirements in California.

(f) An individual previously licensed under this division as a mortgage loan originator, applying to be licensed again, shall prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

### **Chapter 1, Article 3, Section 22109.3**

(a) An applicant for a mortgage loan originator license shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

(1) Ethics.

(2) Federal law and regulation relating to mortgage origination.

(3) State law and regulation relating to mortgage origination.

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent of correct answers to questions.

(e) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(f) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(g) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

**Chapter 1, Article 3, Sections 22109.4 through 22109.6 specify a variety of requirements an MLO must meet once a license is obtained.** Since you don't need to know all those requirements right now (to **GET** your license) I won't subject you to another extensive listing of requirements. However, I will point out a few of the more relevant items contained within these sections since you should have some idea of the requirements you'll need to meet once licensed, and also because it's the kind of information federal and state agencies love to put on tests.

- You have until midnight on December 31 of each year to ensure your annual requirements have been met.
- You must complete at least eight hours of continuing education (or CE) and that CE must include the following:
  - Three hours of instruction on federal law and regulations.
  - Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
  - Two hours of training related to lending standards for the nontraditional mortgage product marketplace. (Incidentally, "nontraditional mortgage product" means anything other than a 30 year fixed rate mortgage.)

- One hour of training related to relevant California law and regulations.

• Continuing education may be offered in a classroom, online, and by any other means approved by the Nationwide Mortgage Licensing System and Registry.

**Chapter 1, Article 3, Section 22112 specifies the surety bond amounts that may be required once you are licensed.**

(a) A licensee shall maintain a surety bond in accordance with this subdivision in a minimum amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

(c) The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

**Chapter 1, Article 4, Section 22150**

The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

**Chapter 1, Article 4, Section 22151**

(a) A finance lender license, broker license, and the license of every mortgage loan originator employed by a lender or finance broker, along with any currently effective order of the commissioner approving a different name pursuant to Section 22155, shall be conspicuously posted in the place of business authorized by the license.

(b) A license is not transferable or assignable. A license issued to a partnership or a limited partnership is not transferred or assigned within the meaning of this section by the death, withdrawal, or admission of a partner, general partner, or limited partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

**Chapter 1, Article 4, Section 22152**

A finance lender or broker licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22101 or 22102. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

**Chapter 1, Article 4, Section 22153**

(a) If a finance lender or broker licensee seeks to change its place of business to a street address other than that designated in its license, the licensee shall provide notice to the commissioner at least 10 days prior to the change. The commissioner shall notify the licensee within 10 days if the commissioner disapproves the change, and if the commissioner does not notify the licensee of disapproval within 10 days, the change in address shall be deemed approved. The commissioner may require an applicant to submit its application to change its place of business through the Nationwide Mortgage Licensing System and Registry.

(b) If notice is not given at least 10 days prior to the change of a street address of a place of business, as required by subdivision (a), or notice is not given at least 10 days prior to engaging in business at a new location, as required by

Section 22102, the commissioner may assess a civil or administrative penalty on the licensee not to exceed five hundred dollars (\$500).

**Chapter 1, Article 4, Section 22154 and 22155 specify *where you can conduct business*.**

(a) No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the commissioner. The commissioner may authorize the other business through the Nationwide Mortgage Licensing System and Registry. (22154)

[You should note there is additional information in section 22154 that will not be relevant to most of you, and we don't have the time to discuss it. But it's nevertheless something you should read at least once. And yes, this is yet another nudge to get you to read for yourself Divisions 9 and 20 of the California Financial Code. Now let's continue with section 22155.]

No finance lender, broker, or mortgage loan originator licensee shall transact the business licensed or make any loan provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner's order, while effective, shall be deemed to amend the original license issued pursuant to Section 22105 or 22109.1. Notwithstanding any provision of this section, a licensee may make any loan and engage in any other business provided for by this division, other than the business described in subdivision (b) of Section 22154, at a place other than the licensed location under either of the following conditions: (22155)

(a) The borrower requests, either orally or in writing, that a loan be initiated or made at a location other than the licensee's licensed location. The use by the licensee of a preprinted solicitation form returned to the licensee by the borrower shall not constitute a request by the borrower that a loan be initiated or made at a location other than the licensee's licensed location.

(b) The licensee makes a solicitation or advertises for, or makes an offer of, a loan displayed on "home pages" or similar methods by the licensee on the Internet, the World Wide Web, or similar proprietary or common carrier electronic systems, and the prospective borrower may transmit information over these electronic systems to the licensee in connection with the licensee's offer to make a loan. (22155)

There are a few more sections of the California Finance Lenders Law I want to specifically highlight.

**No person subject to this division shall do any of the following: [Chapter 1, Article 4, Section 22161]**

(a) Make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering the loan.

(b) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.

(c) Commit an act in violation of Section 1695.13 of the Civil Code.

(d) Engage in any act in violation of Section 17200 of the Business and Professions Code.

(e) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party.

(f) Commit an act that constitutes fraud or dishonest dealings.

**You are also restricted in the manner and content of your advertising.**

**Chapter 1, Article 4, Section 22162**

No licensee shall place an advertisement disseminated primarily in this state for a loan unless the licensee discloses in the printed text of the advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged.

**Chapter 1, Article 4, Section 22163**

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in the manner that the commissioner deems necessary to prevent misunderstanding by prospective borrowers.

**Chapter 1, Article 4, Section 22164**

If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans, the commissioner shall require that the rates, charges, or costs are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by the person, this fact shall be clearly indicated in the advertisement.

**Chapter 1, Article 4, Section 22165**

No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use.

**Chapter 1, Article 4, Section 22166**

The commissioner may require licensees to maintain a file of all advertising copy for a period of two years from the date of its use. The file shall be available to the commissioner upon request.

**Before we leave the California Financing law, let's take a look at the exceptionally wide authority of the Commissioner. [Chapter 1, Article 4, Section 22172]**

(a) The commissioner may do one or more of the following:

- (1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.
- (2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 22109.1 or 22109.4, or withholds information or makes a material misstatement in an application for a license or license renewal.
- (3) Order restitution against a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator for a violation of this division.
- (4) Impose fines on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).
- (5) Issue orders or directives to mortgage loan originators under this division as follows:
  - (A) Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.
  - (B) Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 22100 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

**Whether it seems fair or not, the law gives the commissioner huge latitude to affect your life, and you don't get the same "due process" as you get in trial court, so beware...and be careful.**

### **CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT**

Now let's turn our attention to the California Residential Mortgage Lending Act.

In this section we'll take a brief look at the California Residential Mortgage Lending Act, also known as the CRMLA. Commencing with section 50000, this is effectively DIVISION 20 of the California Financial Code. The regulations within Division 20 are found in Chapter 3, Subchapter 11.5 of Title 10 of the California Code of Regulations [10 C.C.R. 1950.003, et seq].

Similar to the previous section where we looked at the California Finance Lenders Law, we could easily spend an entire day on this section alone. Don't fool yourself into believing that you're an expert in the applicable mortgage laws because you completed two hours of law in a pre-licensing class.

It's easy to get caught up in the daily routine of your job and overlook a few small and seemingly insignificant requirements of the Commissioner. I can assure you the Commissioner does not believe **any** of your requirements or responsibilities as a residential mortgage lender are "insignificant."

Let me restate that a little differently: **there are no "inconsequential" requirements for mortgage lenders.** I suspect you can provide me with numerous examples of violations by others, and you may be able to demonstrate that you have personally ignored some of the requirements for years without any consequences. It's possible you can get by with your negligence or irresponsibility for your entire career.

It's also possible you could be one of that state's examples by suddenly finding yourself in serious trouble for what seems to be minor infractions that are common. Don't fall into that trap!

The California Residential Mortgage Lending Act was enacted in 1994 and become enforced in two years later. This act was passed as an alternative to the existing laws revolving around the subject of licensing lenders under the Real Estate Law and the California Finance Lenders Law (CFLL). What sets the California Residential Mortgage Lending Act apart from other laws within the industry is the fact that it is meant to authorize and regulate mortgage lending activities. Under this act, an applicant can obtain their license as a lender [CA FIN 50120], a servicer [CA FIN 50130], or both. The California Residential Mortgage Lending Act enables licensees to make federally related mortgage loans, loans to finance the construction of a home, to sell the loans to institutional investors and to service those loans. Additionally, under the law, any form of organization can obtain a license. For example, natural persons, sole proprietorships, corporations, partnerships, limited liability companies, associations, trusts, joint ventures, etc....

**Section 50002 of Chapter 1 of Division 20 (the California Residential Lending Act) states that:**

(a) No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

**Section 50002.5 of Chapter 1 of Division 20 (the California Residential Lending Act) states that:**

a) Every licensee engaging in the business of making, servicing, or making and servicing residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 9 (commencing with Section 22000), or has first obtained a license endorsement from the commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(b) A residential mortgage lender or servicer shall not employ a mortgage loan originator whose license or license endorsement has lapsed.

(c) A residential mortgage lender or servicer may not make or broker a residential mortgage loan unless that loan is negotiated by or applied for through a licensed mortgage loan originator.

(d) Every licensee engaged in the business of making, servicing, or making and servicing residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) No mortgage loan originator licensed under this division and employed by a licensed residential mortgage lender or residential mortgage servicer shall engage in any activity that is not an authorized activity for a licensed residential mortgage lender or residential mortgage servicer pursuant to this division.

**Section 50003.6 of Chapter 1 of Division 20 (the California Residential Lending Act) states that:**

(a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a loan originator shall not be required to be licensed as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a residential mortgage lender or residential mortgage servicer license and a mortgage loan originator license under this division.

Chapter 3.5 of Division 20 (the California Residential Mortgage Lending Act – or CRMLA) enumerates its own requirements for Mortgage Loan Originators. Some of the text is almost the same as the California Financing Law - CFL. We will briefly review these, but then move on to information that appears here that was only partially included in the CFL.

The following material is not very similar to what is written and included in the CFL, so this is “new” material from the California Residential Mortgage Lending Act, beginning at section 50140 in chapter 3.5.

(a) An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

(b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.

(c) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(d) The commissioner may, by rule, require mortgage loan originator licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

(e) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report obtained from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (g) and (h).

(g) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

(h) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.

(i) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

**Section 50141 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation or set aside of such revocation shall not be deemed a revocation.

(2)(A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money



laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(2)(B) For the purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(4) The applicant has completed the preclicensing education requirement described in Section 50142.

(5) The applicant has passed a written test that meets the test requirements described in Section 50143.

(6) The applicant is employed by, and subject to the supervision of, a residential mortgage lender or servicer that has obtained a license from the commissioner pursuant to this division.

(7) The surety bond of the residential mortgage lender or servicer employing the applicant covers the activities of the applicant and meets the requirements of Section 50205

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have the powers granted under that chapter.

With regards the California Residential Mortgage Lending Act's requirements to obtain a license, section 50142 denotes the education requirements, section 50143 denotes the testing requirements and section 50144 provides the requirements for mortgage loan originators to keep their license after obtaining one.

**Section 50142 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

(1) Three hours of instruction on federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For the purposes of subdivision (a), preclicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of the preclicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any preclicensing education courses approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Preclicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The preclicensing education requirements approved by the Nationwide Licensing System and Registry for any state other than California shall be accepted as credit toward completion of preclicensing education requirements in California.

(f) An individual previously licensed under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which that individual last held the license.

**Section 50143 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) An applicant for a mortgage loan originator license shall pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics

(2) Federal law and regulation relating to mortgage origination

(3) State law and regulation relating to mortgage origination

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d)(1) An individual shall not be considered to have passed the qualified written test unless the individual achieves a test score of not less than 75 percent of correct answers to questions.

(2) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(3) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

**Section 50144 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 50141.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 50145.

(3) The mortgage loan originator, or the residential mortgage lender or servicer employing the mortgage loan originator, has paid all required fees for renewal of the license.

(4) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on December 31, except as provided in Section 50145. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

As you have probably noticed, these requirements that deal with obtaining a license and keeping one are very similar to those we reviewed under the California Finance Lender Law.

**Section 50145 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) A licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with subdivision (b). The continuing education shall include at least the following:

- (1) Three hours of instruction on federal law and regulations.
  - (2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace. (4) One hour of training related to relevant California law and regulations.
- (b) For purposes of subdivision (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a continuing education course shall include review and approval of the course provider.
- (c) Nothing in this section shall preclude any education course approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.
- (d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.
- (e) Except as provided in subdivision (i), a licensed mortgage loan originator:
- (1) May only receive credit for a continuing education course in the year in which the course is taken.
  - (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
- (f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.
- (g) A person who has successfully completed continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be granted credit toward completion of continuing education requirements in California.
- (h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
- (i) A person meeting the requirements of paragraphs (1) and (3) of subdivision (b) of Section 50144 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.

**Section 50146 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

- (a) Background checks for:
  - (1) Criminal history through fingerprint or other databases.
  - (2) Civil or administrative records.
  - (3) Credit history.
  - (4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry or the commissioner.
- (b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

**Section 50150 of Chapter 3.6 of Division 20 (the California Residential Lending Act) states that:**

(a) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

(b) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

(d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(e) The commissioner shall establish a process where applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

The California Residential Mortgage Lending Act is specific and zealous in its exhaustive listing of prohibited practices and penalties. Most of the time you'll be fine if you conduct yourself with honor and treat others ethically and responsibly. On the other hand, you may have heard the saying, "No good deed goes unpunished." So there are times when you can honorably attempt to help a client through actions that appear reasonable and moral, but the action is prohibited for reasons that may be logical...or in some cases the reasons may seem ridiculous. Again, the bottom line is that it doesn't matter what you think. The CRMLA applies, and it can apply itself harshly depending on the decision of the Commissioner who has great latitude in the enforcement of the Act.

The last part of this section will present several sections of the CRMLA that deal with Prohibited Practices and Penalties. It's not necessary for you to commit everything to memory, but you should be familiar with the potential actions that can be taken against you. And keep thinking about the seasoned MLO that, at age 62, exchanged his house for living arrangements at the state penitentiary for Mortgage Fraud that wasn't actually defined as fraud – but the court invoked the ability to "liberally construe" the law so as to interpret his actions as fraudulent. This is not a complete listing of the section on Prohibited Practices and Penalties, but it contains the sections that most directly affect you.

**Section 50500 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any person who willfully violates any provision of this division, or any rule or order under this division, shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, or to both that fine and imprisonment. No person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 50320.

Let me point out that it just says a person can't be *imprisoned* for violating a rule that he or she had no knowledge of. It does not preclude the fine of \$10,000 for that person. Furthermore, since the commissioner has wide latitude, it would not be difficult to demonstrate the likelihood that the person knew about the rule. The commissioner could point to the pre-education licensing education along with continuing education and add that the CRMLA is easily available on the internet, so it would be difficult to believe the person didn't know he or she was violating the law. It's more a matter of politics than logic or fairness. What I'm really trying to say is, "Don't count on using this as your defense!"

**Section 50501 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) Any person who violates a provision of this division, or any rule or order under this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. This penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

**Section 50501.5 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or person is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designee may issue a citation to that licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation and fine payment thereof by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If, within 30 days from the receipt of the citation, the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

**Section 50502 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

It is a violation of this division for any person to make any untrue statement of a material fact in any document filed with the commissioner under this division or rules adopted thereunder, or to omit any material fact which is required to be stated in any document.

**Section 50503 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) It is a violation for any person subject to this law or any director, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of trust funds, except as permitted by Section 50202, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity that constitutes theft or fraud in connection with any trust fund transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission of a material fact, pertaining to a loan or loan servicing.

(b) Any director, officer, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, or employee of a residential mortgage loan servicer who abstracts or misappropriates money, funds, trust obligations, or property deposited with a licensee, commits a violation of this section. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

**Section 50504 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) If an amount other than or in excess of the charges permitted by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund to all borrowers charged the excess amount, the excess amount and the amount of the charge, both with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

(b) If interest on the principal amount of a loan in excess of the amount authorized by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund the excess interest amount to all borrowers charged the excess amount, with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

**Section 50505 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any person who violates any provision of any of the following federal acts or regulations violates this division:

- (a) The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.)
- (b) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.)
- (c) The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639.)
- (d) Any regulation promulgated under any of the federal acts in subdivision (a), (b), or (c).

**Section 50506 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly receives or appropriates any of the licensee's property, other than in payment of a just demand or with intent to defraud, or who omits to make or causes an omission to be made in the full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof, violates this division.

**Section 50507 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly makes or concurs in making or publishing any false entry in its books or records, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books, willfully refuses or neglects to make any proper entry in the books as required by law or to allow the books to be inspected by the commissioner or his or her deputies or investigators, violates this division.

**Section 50508 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who makes a false entry in any book or record of the business, or in connection with any transaction of the business, with intent to deceive any officer, director, or employee thereof, or any agent or examiner, employed or lawfully appointed to examine into its condition or any of its affairs or transactions, or to any public officer who has authority to examine into its affairs or transactions, or who, with like intent, omits to make a new entry of any matter particularly pertaining to the business property condition, or transactions of the entity in any document of the licensee, or who, with like intent, makes unavailable any document of the licensee made, written, or kept, or required to be made, written, or kept by him or her under his or her direction, violates this division.

**Section 50509 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any officer, director, partner, trustee, or employee of any entity who abstracts or misapplies any of the money, funds, or property of a licensee, or misapplies its credit, or abstracts or misapplies money, funds, trust obligations, or property deposited with a licensee, violates this division. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the licensee. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

**Section 50510 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Nothing in this chapter shall be construed to authorize a criminal prosecution for a violation of a civil statute incorporated by reference into this division. Civil monetary penalties and fines shall not be imposed under this law for a violation of subdivision (e) or (j) of Section 50204 or Section 50505 if a licensee demonstrates that it has paid a civil monetary penalty or fine for the same act or transaction, as a violation of Section 17200 or 17500 of the Business and Professions Code, Section 2941 of the Civil Code, or provisions of the Real Estate Settlement Procedures Act (12 U.S.C.A. Sec. 2601 et seq.).

**Section 50511 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

The commissioner may, subject to the requirements of subdivisions (b), (c), and (d) of Section 50318, suspend for a period not to exceed 12 months or bar a person from any position of employment with a licensee if the commissioner finds that the person has willfully used or claimed without authority a designation or certification of special education, practice, or skill that the person has not attained, or willfully held out to the public a confusingly similar designation or certification for the purpose of misleading the public regarding his or her qualifications or experience.

**Section 50512 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

**Section 50513 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) The commissioner may do one or more of the following:

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144, or withholds information or makes a material misstatement in an application for a license or license renewal.

(3) Order restitution against a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator for a violation of this division.

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(5) Issue orders or directives to mortgage loan originators under this division as follows:

(A) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(B) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 50002 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

In summary, negligence and irresponsibility can have serious consequences for loan originators. Know the law, maintain diligence, and treat your clients with great respect. A good reputation can go a long way in minimizing the consequences of a mistake should you ever find yourself in an undesirable discussion with the commissioner. Be smart. Be vigilant. And be successful!



## Case Studies

### **CASE STUDY #1**

You have a new client who wants to obtain a mortgage loan and purchase a primary residence. After working with her and obtaining all qualification materials, the client's credit application is denied. You telephone her and state the cause for this decision. You discuss ways she can improve her credit issues, counsel her on her right to receive a free credit report and suggest that she try to apply for a mortgage loan in one year to give time for her establishment of a favorable credit history.

Two months later, you still think about your potential borrower and send her a letter stating that her application is denied in the hopes that she will continue to remember that she has some work to do in order to become a borrower. You do not want to lose this client and want her to come back once she is more qualified.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:

What kind of letter should a mortgage loan originator send a person whose application has been denied?

- a. A notification of adverse action
- b. A letter is not needed if the loan originator communicates via telephone
- c. A counteroffer letter
- d. A conditional approval letter

**Answer: A**

Question # 2:

What, if anything, is wrong with the scenario?

- a. The loan originator did not send the denial letter right away
- b. The loan originator waited too long to send the denial letter
- c. The loan originator told the client about her denial via telephone instead of in person
- d. The loan originator does not have the authority to speak to a client regarding the approval or denial of an application

**Answer: B**

Question # 3:

Within how many days of a denial must a notification of adverse action be provided to the consumer?

- a. 30 days
- b. 60 days
- c. 10 days
- d. 3 days

**Answer: A**

### **Case Study #1 Answer/ Explanation**

In this scenario, you must comply with the guidelines found in the Equal Credit Opportunity Act (ECOA). The consumer came to you in order to obtain a mortgage loan, and, unfortunately, she did not qualify for one. Therefore, according to the law, 30 days after the denial of her mortgage loan application, she is entitled to a Notice of Adverse Action. In this case, this particular disclosure provides an explanation as to why her mortgage loan application was denied.

Though, in the scenario, you sent her a letter explaining her denial, you did so two months after the denial, which is in direct violation of the law. The applicant must receive the letter within 30 days of the decision regarding the application. The law states that not only should the applicant receive the disclosure, the disclosure should contain clear and concise reasons for the denial, as indefinite or vague reasons are illegal. The only time a creditor is exempt from issuing a notification is if the application was taken by telephone and the applicant did not provide their address as requested by the creditor. In all other cases, the law requires the disclosure be provided to the consumer.

## **CASE STUDY #2**

You have a new potential borrower that walked into your office requesting a meeting to find out what he needs to do to obtain a mortgage loan. You provide him a list of documents you will need from him in order to determine whether he will qualify for a mortgage loan. A few days later he comes back to meet with you with documents and ready to fill out a mortgage loan application.

You have gone through most of the loan application with the potential borrower. All you have left to fill out prior to submitting to underwriting is the section requesting data for purposes of HMDA. You ask your client to complete the section requesting data on his race and national origin, his ethnicity, and gender prior to signing the loan application. He expresses he is not comfortable providing such information. You tell him that in order for you to submit a completed loan application, he must answer these questions, as they cannot be left blank. After explaining this to him, he answers the questions and you are able to complete his loan application.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:

Did you correctly handle this situation?

- a. Yes, an application must be completed prior to submitting.
- b. No, the client should not feel obligated to provide such information.
- c. Yes, the information must be included in the loan application for approval.
- d. No, the client should have felt comfortable to give you the information to begin with.

**Answer: B**

Question # 2:

Which of the following is most accurate?

- a. A mortgage loan applicant is obligated to provide information regarding his race and national origin, his ethnicity, and gender.
- b. A mortgage loan originator must provide the information regarding the race and national origin, ethnicity, and gender of the potential borrower on the application.
- c. The section of the loan application regarding the race and national origin, ethnicity, and gender of the potential borrower can be left blank.
- d. If a mortgage loan originator does not provide the information on the applicant's race and national origin, ethnicity, and gender, the application will be denied.

**Answer: B**

Question # 3:

If the applicant does not want to provide information regarding his or her race or national origin, ethnicity, or gender, what is true?

- a. The mortgage loan originator must fill out the information based on observation or surname.
- b. The mortgage loan originator must leave it blank.
- c. The mortgage loan originator must notify the applicant that the application will be denied.
- d. The mortgage loan originator must provide the borrower with a notice of adverse action.

**Answer: A**

### **Case Study #2 Answer/ Explanation**

In this scenario, you did not follow what is required of you by law. The Home Mortgage Disclosure Act is a law that requires financial institutions provide certain data to the public. Specifically, HMDA data collection about demographics on the loan application includes the collection of information on the applicant's ethnicity, sex, and race or national origin. While completing a loan application, the loan originator must ask the applicant to choose from the following categories and options:

#### **Ethnicity**

- Hispanic or Latino
  - Mexican
  - Puerto Rican

- Cuban
- Other Hispanic or Latino (print origin)
- Not Hispanic or Latino

**Sex**

- Female
- Male
- I do not wish to provide this information

**Race**

- American Indian or Alaska Native (print name of enrolled or principal tribe)
- Asian
  - Asian Indian
  - Chinese
  - Filipino
  - Japanese
  - Korean
  - Vietnamese
  - Other Asian (print race)
- Black or African American
- Native Hawaiian or Other Pacific Islander
  - Native Hawaiian
  - Guamanian or Chamorro
  - Samoan
  - Other Pacific Islander (print race)
- White
- I do not wish to provide this information

However, though the mortgage loan originator must ask the applicant for this information, the applicant is under no legal obligation to provide this information. If the applicant does not want to provide this information, the loan originator must make note of the fact and, to the best of his or her ability, provide the information based on visual observation and surname.

In this scenario, you made the client feel obliged to furnish information he did not want to furnish. This is not what is legally required of you. Proper behavior in this case would have been to tell the applicant that he is not obligated to answer, taken note of the fact, and later filled out this section on the application on your own based on visual observation or the applicant's name.

### **CASE STUDY #3**

You are working with a borrower to help her purchase her first home. You've been helping her get everything ready in order to qualify for a mortgage loan for almost a year. She finally found a property she likes and starts the process to obtain a mortgage loan. You really like this client and want to make sure that all goes smoothly during the purchasing process.

It is finally time to order an appraisal. Luckily, you have been in contact with the appraiser before and feel comfortable calling him to chat about this particular appraisal. You make it clear that the buyer and the sellers are both willing parties and have agreed that the property should sell for \$235,000. You explain to the appraiser that the value of the property on the appraisal report must come in at \$235,000 or the deal will not go through. You also mention that there are two real estate agents involved in the sale and they both agree that this figure is an accurate one for the property. The appraiser responds positively and a few weeks later delivers what you requested.

Everything else works out well and your client closes the loan and purchases her first home. A week after the loan closes, the borrower writes a letter requesting a copy of her appraisal report. You know you have some time to send it to her, so you wait but forget to send it. Finally, a couple of months later you remember and send her the copy knowing that legally she is entitled to a copy of the appraisal.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:

After reading the scenario, what is most accurate?

- a. You are a good loan originator for caring enough about your client to contact the appraiser in order to make sure she can purchase her first home.
- b. What you have done is illegal and you should be subject to disciplinary action.
- c. So long as you provide the borrower with a copy of the appraisal, you have not violated the law.
- d. By taking such an interest in making sure the client obtains the mortgage loan, you have appropriately completed your fiduciary duties.

**Answer: B**

Question # 2:

Your client requested a copy of her appraisal. What should you have done?

- a. Consumers have a right to a copy of their appraisal. A copy should be provided to them when requested.
- b. If the request for the copy of an appraisal is written and not oral, then you must provide a copy of the appraisal.
- c. A copy of the appraisal can only be given before the loan closes.
- d. The only person that needs a copy of the appraisal is the lender. You are not under any obligation to provide an appraisal report to the consumer.

**Answer: A**

Question # 3:

According to the law, a creditor need not provide a copy of the appraisal when the request is received 90 days after notice from the creditor or 90 days after the application is withdrawn. If the borrower requests in writing a copy of the appraisal 2 weeks after the loan closes, how many days do you have to provide the copy?

- a. 90
- b. 10
- c. 30
- d. 60

**Answer: C**

### **Case Study #3 Answer/ Explanation**

In this scenario you have violated the law as a mortgage loan originator. According to the Valuation Independence Rule brought forth by the Federal Reserve, a person involved in a mortgage loan transaction is prohibited from directly or indirectly coercing, extorting, inducing, bribing, intimidating, compensating, or colluding with a person preparing real estate valuations. It is illegal for an appraiser to base the appraised value of a property on factors other than their independent judgment.

Having spoken directly with the appraiser in an attempt to get a specific appraised value for the subject property is illegal. Both you and the appraiser are liable for this behavior. Though by law you are required to act in the best interest of your client, you cannot collude with an appraiser in order for your client to obtain a loan.

With regards to your client's request of a copy of her appraisal, the law states that a client is entitled to one. The law is also specific regarding the timing of the copy's delivery. The Equal Credit Opportunity Act states that mortgage lenders are required to notify applicants of their right to receive a copy of their appraisal. The copy may be provided to the consumer, whether credit is granted or denied. If a consumer requests in writing that they want a copy of their appraisal, the creditor shall provide it within 30 days of the written request. However, if the request is provided 90 days after a notice from the creditor of a denial or if the application has been withdrawn, there is no obligation to provide a copy of an appraisal. In the case, the applicant requested the copy two weeks after the closing. This means that you should have provided the copy within 30 days of her request. Because you did not do so, you are in violation of the law.

## **CASE STUDY #4**

Claire goes to a mortgage lending institution to meet with a mortgage loan originator. She wants to purchase a property and would like to obtain a mortgage loan in order to do so. Ted is a mortgage loan originator that currently is not busy; therefore, he invites her into his office. After a few minutes of conversation, Ted learns that Claire has already found a property that she likes, and she wants to put an offer on that property but would like to make sure that she qualifies for a mortgage loan before presenting the offer.

Ted starts filling out a mortgage loan application with Claire. He asks her various questions and requests that she bring some supporting documents regarding her financial standing, such as bank statements and retirement account statements. Ted also downloads Claire's credit report. Overall, it appears that Claire will qualify for a mortgage. She notifies Ted that the current selling price is \$187,000 and that she can put down a 10% down payment. After reviewing her application and running some numbers, Ted is able to pre-qualify Claire for a conventional loan of \$168,300. She will have to put \$18,700 as a down payment. To continue on with the mortgage loan application Ted asks Claire about her race or national origin. Claire answers that she is White. Ted asks Claire about her ethnicity and Claire responds by saying she is Hispanic or Latino. Ted asks Claire about her gender, and she responds that she is a female. Lastly, Ted asks Claire whether she intends to have a family in the near future. She responds yes. Ted follows this question by asking whether Claire is able to bear children. She responds that luckily, she is able to bear children and she can't wait to do so.

Claire and her real estate agent send her offer to the seller and the seller accepts the offer. Within the next month Claire and Ted work together and close on the loan. After the closing date, Claire moves to her new house and begins the next chapter of her life as a homeowner.

Please answer the following multiple-choice questions relating to the scenario:

Question # 1:

Has Ted acted in violation of the law in any way during the course of his time with Claire?

- a. No, Ted seems to have acted as a good loan originator throughout the lending process.
- b. Yes, Ted has violated the law.
- c. No, Ted has not violated any law, but has acted unethically.
- d. We do not have enough information about their interaction to note whether Ted has acted in violation of the law.

**Answer: B**

Question # 2:

If Ted has acted in violation of the law, what law has he violated?

- a. Ted has not violated any law.
- b. Ted has violated ECOA guidelines.
- c. Ted has violated RESPA guidelines.
- d. Ted has violated TILA guidelines.

**Answer: B**

Question # 3:

In what way has the law been violated?

- a. ECOA laws specifically state that a loan originator cannot inquire about a consumer's ability to bear children.
- b. TILA specifically provides that loan originators cannot inquire about the consumer's ethnicity.
- c. RESPA specifically provides that loan originators cannot inquire about a consumer's race.
- d. Fair Lending Laws state that a loan originator cannot ask a consumer about their gender.

**Answer: A**

### **Case Study #4 Answer/ Explanation**

In this scenario Ted has violated federal law. According to ECOA, though a mortgage loan originator can ask an applicant about their age, marital status, and number of dependents, they cannot ask about the applicant's childbearing plans. An applicant's childbearing plans, or ability, should in no way affect an applicant's chances for the extension of credit. Considering that this is both illegal and unethical, Ted should be subjected to disciplinary action.

## **CASE STUDY #5**

A branch manager is trying to find a way to bring in more business to his mortgage loan office. His mortgage loan originators are not bringing in enough business to cover all of the monthly expenses; therefore, he is looking for recruitment tools. After thinking about what to do, he has the idea of motivating real estate agents to bring in referrals to the branch office. He decides that a contest would be the best way to motivate these agents. The following week, the branch manager attends a real estate agent gathering. He requests five minutes of their time in order to announce his contents. He announces that his company is offering a contest for real estate agents. The agent that brings in the most referrals within the next 30 days to his branch office will win a brand-new laptop computer. Of course, the real estate agents become excited and are up for playing the game.

30 days later, the branch manager calculates that he has seen a 30% increase in business. Delia, one of the real estate agents has brought in the most borrowers and in the next real estate agent gathering, the branch manager announces that she has won and gives her the new laptop computer.

Please respond the following questions relating to the scenario:

Question # 1:

Has there been a violation of the law in the scenario?

- a. No, there has not been a violation of any law.
- b. Yes, there has been a violation of RESPA provisions.
- c. Yes, there has been a violation of TILA provisions.
- d. Yes, there has been a violation of the Dodd Frank Act.

**Answer: B**

Question # 2:

Which of the following is accurate regarding any violation of the law in the scenario?

- a. The fact that the contest requested referrals for a thing of value.
- b. The fact that the contest requested referrals.
- c. The fact that the branch manager saw an increase in business.
- d. The fact that there was a contest.

**Answer: A**

Question # 3:

What section of the law was violated?

- a. Section 8 of RESPA, which prohibits any kickbacks, referral fees, and unearned fees
- b. Section 9 of RESPA, which prohibits any kickbacks, referral fees, and unearned fees
- c. Section X of Dodd Frank Act, which prohibits the use of contests for increased business.
- d. Section 2 of TILA, which prohibits exchanging something of value for referrals.

**Answer: A**

### **Case Study #5 Answer/ Explanation**

The case study is an example of a violation of the Real Estate Settlement and Procedures Act (RESPA). Though the branch manager was simply trying to improve business, creating this particular incentive for the bringing in of more business is illegal. According to RESPA's Section 8, it is illegal to give or accept a fee, kickback, or anything of value in exchange for a referral involving a federally related mortgage loan transaction.

The branch manager motivated the referral of business by offering a brand-new laptop to the person who brought in the most referrals. The laptop is most certainly a "thing of value," making this scenario a violation of the law. This does not mean that the branch manager cannot give anything to real estate agents in order to promote business. Promotional items such as ink pens, magnets, or post it pads can be provided without violating RESPA provisions. The important thing to remember is that it is illegal to provide an item of value for the referral of loan business.

## **CASE STUDY #6**

Jennifer is a mortgage loan originator at Financing California Mortgage. Financing California Mortgage is a relatively new mortgage lending institution, and has five mortgage loan originators, including Jennifer. Jennifer is not a seasoned loan originator, as she just received her license four months ago. Unlike in most banks, at Financing California Mortgage, mortgage loan originators are paid in commission and they have to recruit their own customers. Jennifer is very nervous about getting enough customers, particularly since this is her only means of income. She uses social media to advertise herself as a mortgage loan originator, and even attends some networking events to try and spread her information around in the hopes of gaining new business.

While getting some coffee, Susan, the processor at Finance California Mortgage, sees Jennifer and notices that she seems to be stressed out and asks her what is wrong. Susan's sole job in the office is to process loans, but she is also known as the office helper because she enjoys being of help to those around her whenever possible. To answer Susan's questions, Jennifer tells her that she has been having a really difficult time finding customers, and doubts that she can continue being a mortgage loan originator because of it. Susan tells her that these things take time, but suggests that she can help Jennifer find new customers as she has before for other loan originators.

Susan tells Jennifer that she helped Jeremy, another one of their coworkers, gain a lot of new customers by advertising for them last year. Susan is very gifted at graphic design and is able to make very professional advertisements for social media as well as print media. She also has the benefit of having worked in the insurance business prior to the mortgage lending business, and therefore, has a very long list of friends on social media that she could advertise to. After Susan explains her success with her previous advertisement for Jeremy, she states that she would be more than happy to create new advertisements to increase the flow of business for Jennifer. Not only would this help Jennifer, but it would also help Susan as, aside from her salary, she receives a \$100 bonus for every file she processes that closes. Jennifer jumps at the idea and agrees to let Susan help her gain new business.

A couple of days later, Susan walks into Jennifer's office and shows her a copy of the advertisement she wants to use to promote business. The advertisement looks terrific. Susan included all the pertinent information, such as the company logo, telephone number, and address. She also included a nice catchy line on the advertisement:

"Call Susan Wielder and Jennifer Stevens today and you could become a homeowner tomorrow! As your loan originators, we will not stop until we make it happen."

Jennifer thinks the advertisement is great and advises Susan to go ahead and begin applying her marketing technics online and in print.

About 1 month later Jennifer had two loans in the pipelines and one that was cleared to close. Susan's advertising strategy worked well and Jennifer felt relieved. Because of Susan and the business she brought her, Jennifer decided to give the mortgage lending industry a second chance.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:

In the scenario, has anyone violated the law?

- No, the law has not been violated in this scenario.
- Yes, the law was violated by paying loan originators commission rather than salary.
- Yes, the law was violated by Susan in the advertisement.
- Yes, loan originators are legally not allowed to advertise their services.

**Answer: C**

Question # 2:

What exactly would be considered a violation of the law in the scenario?

- The fact that Susan represented herself as being involved in loan origination activities.
- The fact that Jennifer represented herself as a loan originator.
- The fact that Susan and Jennifer acted as a team and did not include other originators in the office.



- d. The fact that they advertised their services.

**Answer: A**

Question # 3:

If the advertisement would have been created in accordance to the law, which of the following would have been best?

- a. "Call Susan Wielder and Jennifer Stevens today and you could become a homeowner tomorrow! As you loan originators, we will not stop until we make it happen."
- b. "Call Jennifer Stevens today and you could become a homeowner tomorrow! As your loan originator, I will not stop until I make you a homeowner. "
- c. "Call Susan Wielder today and you could become a homeowner tomorrow! As your originator I will not stop until I make it happen."
- d. "Call Jenifer and Susan today to become a homeowner tomorrow. We will work for you until we make you a homeowner."

**Answer: B**

### **Case Study #6 Answer/Explanation**

Yes, the above scenario does contain a law violation. The advertisement is in violation of California Finance Lender Law.

*Section 22014 of Chapter 1 of the California Finance Lender Law states:*

*"An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.*

*Susan violated this law by creating an advertisement that denoted her as a mortgage loan originator, therefore insinuating to the public that she conducts mortgage loan origination activities. This is in direct violation of Chapter 1, Section 22014 of the California Finance Lender Law."*

If Susan had made the advertisement without representing herself as involved in loan originator activities, the advertisement would have likely not been in violation of written California law.

## **CASE STUDY #7**

Daniel Mashburn has been a manager at a local clothing goods store for the better part of the last decade. He and his wife are about to have their first child. Daniel decides to pursue a career that could be more lucrative. After speaking to one of his friends who is a real estate agent, he decides to try and get a license as a mortgage loan officer.

Daniel follows the pre-licensure requirements provided by California and Federal law. He joins a 20-hour pre-licensure course, which includes the three hours of instruction on federal law and regulations, three hours of ethics, and two hours of training related to lending standards for the nontraditional mortgage product, two hours of training related to relevant California law and regulations, and 10 hours of undefined instruction on mortgage origination. Once he is done with the 20-hour course, Daniel signs up to take the written test administered and approved by the Nationwide Mortgage Licensing System and Registry. Daniel takes the exam and receives a 79%. At this point, he speaks with his real estate agent friend who puts him in contact with a mortgage lending company that is currently hiring.

Daniel's interview with the mortgage lending company goes well, and the interviewer advises him to continue with the process of getting licensed, because once he receives his license he can begin working for them. After leaving the interview, Daniel goes to a designated location to get fingerprinted as part of his background check. Getting background checked can be a little intimidating, but Daniel is not worried because he has only gotten in trouble with the law once and that was seven years prior, which Daniel knows is the cut-off as per the law regarding licensure for mortgage loan origination. Not only that, but he was simply guilty of trying to forge part of his tax returns in order to prevent paying a large sum to the IRS.

After completing his background check, Daniel pays the application fees and submits his application to the Nationwide Mortgage Licensing System and Registry. Anxious to receive his license, Daniel decides to take the next few weeks to purchase more professional looking clothing, and to study the mortgage lending business in order to be as well versed in it as possible. He is very excited about this new career and chapter in his life.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:

Do you foresee Daniel having any issues receiving his license as a mortgage loan originator?

- a. No, Daniel has done everything he must in order to receive a mortgage loan originator license.
- b. Yes, Daniel will have an issue receiving his license as a mortgage loan originator.
- c. No, Daniel has not completed all of his prelicensing education, which is required for a license.
- d. No, Daniel did not pass the examination for a license.

**Answer: B**

Question # 2:

Has Daniel completed all of the required pre licensing education?

- a. Yes, Daniel has taken all of the required pre licensing education hours.
- b. No, Daniel is still missing 5 hours of California relevant laws and regulations.
- c. No, Daniel needs to take 1 more hour of training related to relevant California laws and regulations.
- d. No, Daniel needs to take 2 hours of training related to lending standards for nontraditional mortgage product.

**Answer: A**

Question # 3:

Has the requisite amount of time passed for Daniel's background check to be considered clean for the purposes of obtaining a license?

- a. Yes, it has been 7 years since Daniel got in trouble.
- b. Yes, it has been 7 years since Daniel got in trouble and since his crime dealt with forgery, he will have no issues.
- c. Yes, it has been 7 years since Daniel got in trouble with the law. However, Daniel's crime was fraud, therefore he cannot obtain a loan originator license.
- d. Yes, it has been 7 years, which is the amount of time necessary preceding the date of application for licensing and registration.

**Answer: C**

**Case Study #7 Answer/Explanation**

The problem with the above scenario has to do with the crime Daniel committed. The Commissioner will deny his license.

*It's true, Daniel completed the various tasks required of him by law for application for a mortgage loan originator license. Typically, there would be no reason to deny his application as he took the requisite education hours and passed the exam; however, his application will likely be denied. According to both California law and Federal law, the Commissioner shall deny an application for mortgage loan originator license unless the Commissioner makes at a minimum the following finding: The applicant has not been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted. Daniel committed a crime over 7 years ago; however, the issue isn't regarding the length of time that has passed, rather the type of crime that was committed. Daniel committed fraud. He tried to forge his tax returns. This type of crime makes it difficult to believe that he will behave ethically and honestly as a loan originator, and therefore, gives the Commissioner grounds to deny his application. After all, the California Residential Mortgage Lending Act states that an applicant must demonstrate financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purpose of this division.*

## FORUM DISCUSSION TOPICS

### **Day 01 – General Mortgage Knowledge**

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Considering the amount of time most borrowers keep a mortgage loan, is it better for them to try to find a way to increase their down payment, or is it financially better to pay the cost of PMI?

### **Day 02 – Mortgage Loans: Structures and Types**

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As a Mortgage Loan Originator, you will be in a position to offer borrowers a variety of loan structures. Of the types of loans discussed in the lesson, which would you feel is best for most residential borrowers? Why did you make that choice? What are the disadvantages to the one you selected?

### **Day 03 – Loan Origination Processing Part 1**

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An appraiser makes the assumption that the property is being purchased for cash. Why is that an important consideration, and what effect do you think it has on the final outcome of the property value?

### **Day 04 – Mortgage Qualifying and Pre-Prep**

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The two major processes that impact on the mortgage loan are the appraisal and the home inspection. The former is used to establish a market value, and the latter to determine if the home is in the condition the seller represented it to be. Since the value of the property is greatly influenced by its condition, do you think the appraiser should be given the home inspection report to consider when doing the appraisal? Please explain your response.

### **Day 05 and Day 06 – Originator Activities**

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TILA requires the disclosure of the APR. Since most borrowers do not know how it is calculated, but simply that it is higher than the simple interest rate, do you feel that the APR should be the only one mentioned in advertising?

### **Day 07 and Day 08 – Governing Regulations and Entities**

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TILA only applies to natural persons, and not to corporations, organizations, loans for business commercial or agricultural purposes, and loans over \$25,000 not secured by real property. Do you feel that these exclusions have some basis for not falling under TILA guidelines?

### **Day 09 – Dodd Frank**

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The Dodd-Frank Act was intended to streamline the regulatory process. Do you feel that it has done this, or simply complicated the process with excessive regulation?

### **Day 10 – More Governing Regulations and Entities**

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Do you feel the Home Mortgage Disclosure Act (HMDA) is doing an adequate job in the prevention of red-lining and predatory lending? If so, explain how. If not, give examples of what more could be done.

### **Day 11 – Fannie Mae/Freddie Mac/PMI/HPA**

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Do you feel that Fannie Mae and Freddie Mac are still viable concepts for our economy?

## COURSE HOMEWORK ASSIGNMENTS

### Day 01 Assignment

- Reverse mortgages are advertised extensively on television. What are the advantages and disadvantages of this product?

### Day 02 Assignment

- While the 30 year Fixed Rate Level Annuity Loan remains popular, many borrowers are selecting a 15 year plan. While this has obvious advantages in saved interest expense, what are the disadvantages?
- In some cases, a borrower may elect a bi-weekly payment plan, rather than the traditional monthly plan. Is there a downside?

### Day 03 Assignment

- To ensure an objective view of the property value, lenders rely on Appraisal Management Companies to appoint an appraiser. Sometimes the appraiser selected is unfamiliar with the area, but, nonetheless, prepares the appraisal. The appraisers say that their methodology does not rely heavily on familiarity with the property location and, therefore, will work anywhere it is applied objectively. Logic would suggest that the more familiar the appraiser is with the area, the better the analysis. What are your thoughts?

### Day 04 Assignment

- Explain how the calculation of the basic PITI differs in conventional, FHA, and VA loans.

### Day 05/06 Assignment

- Explain why the calculation of a simple interest rate and APR are different.
- A borrower was borrowing \$100,000 at 3% simple interest, and the MLO said there was \$1,000 in points the borrower had to pay. What is the borrower's APR?
- In the lesson, we mentioned that income analysis has 3 dimensions. Identify the 3 and explain each.

### Day 07/08 Assignment

- List the choices the MLO will have in completing the loan application in order to comply with ECOA in each of the following:
  - race or national origin
  - marital status
  - ethnicity

### Day 09 Assignment

- The Dodd-Frank Act created the CFPB, OCRA, and FSOC. What is the purpose of each of these?

### Day 10 Assignment

- How does the S.A.F.E. Act prevent abusive, predatory practices during loan origination?
- The FBI lists two specific categories for mortgage fraud. Name and describe both categories.

## **Day 11 Assignment**

- Explain the relationship between the primary and secondary market and the role each plays.
- Give a detailed explanation of what caused Fannie Mae and Freddie Mac to be placed in conservatorship.