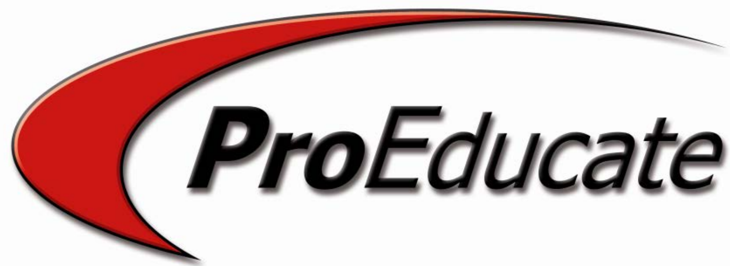

20 Hour SC SAFE Comprehensive: Financing Residential Real Estate

COURSE MANUAL
Part 3

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3/18

- 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), 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: 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:

- 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 3rd 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
- Mail, telephone or Internet

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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 0, 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

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    - Persons who perform real estate brokerage activities
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    - 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 HUD-1 SS

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 stop 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.

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 HUD-1 SS

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

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 **borrows 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 it 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 form the automated system.

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- 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

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

- 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 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
- 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

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 Admin- FHA
    - Private – Corporations will underwrite

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).

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

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. Prepaids**
            - 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**

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. Prepaids**
  - 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."

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- **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 3rd 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
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South Carolina State Content - Part 1

South Carolina Department of Consumer Affairs and South Carolina Board of Financial Institutions

OVERVIEW

In this lesson students will learn about the South Carolina Department of Consumer Affairs, the South Carolina State Board of Financial Institutions, as well as some of the laws and regulation definitions pertaining to mortgage lending. Students will have an understanding of the importance of and be well versed in the responsibilities, limitations, and structure of both the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions. Additionally, students will become familiar with some of the more important laws and regulation definitions relating to mortgage lending in South Carolina, including the South Carolina Mortgage Lending Act and the High Cost Consumer Protection Code, as well as provision in Chapter 3 and Chapter 10 of Title 37 in the South Carolina Code of Law.

Learning Objectives

After reviewing this lesson, students should:

- Be able to discuss the authority, structure, and responsibilities of the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions
- Understand different definitions included in the state laws and regulations
- Know some of South Carolina Laws and Regulations as they pertain to mortgage loan originators

South Carolina Department of Consumer Affairs

There are two very important regulatory offices in South Carolina that, among other things, pertain to mortgage lending and licensing; the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions. We will first start by discussing the South Carolina Department of Consumer affairs and later move on to discussing the South Carolina State Board of Financial Institutions.

In 1974, the South Carolina Consumer Protection Code [Title 37] established the South Carolina Department of Consumer Affairs (SCDCA or Department for short). The Department of Consumer Affairs is meant to administer and enforce the Consumer Protection Code. As South Carolina's consumer protection agency, the Department is also entrusted to enforce Title 37 as well as other regulatory statutes. The Department's goal is to protect consumers in South Carolina.

The South Carolina Department of Consumer Affairs website, http://www.consumer.sc.gov/, has a lot of useful information regarding its purpose, structure, and responsibilities. We will go over some of this information below.

The South Carolina Department of Consumer Affairs helps:

- Formulate and modify consumer laws, policies and regulations
- Regulate the consumer credit marketplace
- Resolve complaints arising out of the production, promotion, and sale of consumer goods and services in the state (whether or not credit is involved)
- Promote a healthy competitive business climate with mutual confidence between buyers and sellers.

The Consumer Protection Code authorizes the South Carolina Department of Consumer Affairs to do the following:

- Analyze and mediate individual complaints
- Investigate business practices if a pattern of fraud is suspected
- Inform about complaints filed against a business
- Educate consumers about unfair and deceptive practices
- Take legal action to prevent persons from violating the Code and prohibit unconscionable conduct.

However, the Consumer Protection Code does **not** authorize the Department to:

- Advise a consumer of whether a particular business is reputable
- Recommend a company with which a consumer should do business
- Handle complaints against a state agency

In order for the Department to do what the Code has authorized it to do, it has had to be structured in a specific way. The Commission on Consumer Affairs governs the South Carolina Department of Consumer Affairs as well as appoints the Administrator and the Department itself is structured into six different parts, each with different and specific responsibilities:

- Administration – This division includes:
  - The resources necessary to support the operation of the Department.
  - The appointed person who is the Administrator. The Administrator runs the daily operations of the Department and is entrusted with advising the legislature and Governor on consumer issues and the state of credit in South Carolina.
  - Procurement, human resources, accounting and information technology.
- Consumer Services
  - The consumer services division handles consumer complaints that are made regarding the businesses that are regulated by the Department as well as complaints that are unregulated. Complaints against businesses that are not regulated by the Department are referred to the appropriate jurisdiction.
  - The division's mediation process helps alleviate the courts' workload and saves consumers and businesses money as going through the courts usually entails a larger cost.
- Consumer Advocacy
  - The consumer advocacy division specifically deals with the insurance interests of consumers. To do so, the division reviews insurance rate requests that are filed with the Department of Insurance with the goal of generating savings for both consumers and businesses.
  - The division has regulatory responsibility over various different organizations as denoted in many acts:
    - Continuing Care Retirement Communities (Act 97 of 1989),
    - Discount Medical Plan Organizations (Act 377 of 2006),
    - Professional Employer Organizations (Act 169 of 1933), and
    - The regulation of the sale of cosmetic contact lens without a prescription from an authorized dispenser.
- Public Information and Education
  - The public information and education division's sole purpose is to provide the consumer, businesses and media with education and educational resources. This division provides information on consumer rights and responsibilities and provides presentations, webinars, and other resources helpful to the consumer.
  - A few of the helpful webinar topics covered by the division and available to consumers include webinars on:
    - Identity theft
    - Debt collection
    - Foreclosures
    - Credit
  - The division also takes calls from consumers regarding consumer scams and laws and provides press releases and consumer education brochures.

- Identity Theft Unit
    - The identity theft division handles the administration and enforcement of the South Carolina's Financial Identity Fraud and identity Theft Protection Act as well as other state acts pertaining to identity theft and the protection of consumers.
    - The identity theft division also provides education and outreach for consumers. However, the division's main focus is on identity theft.
    - The division also provides warnings to the public regarding new scams.
    - Additionally, the division provides step-by-step guidance on what to do if a consumer is a victim of identity theft.
- Legal Division
    - The legal division administers and enforces the law governing consumer credit transactions.
    - The legal division also has regulatory responsibility over other industries:
        - Motor Clubs (Act 400 of 1984),
        - Rent-to-own businesses (Act 121 of 1985),
        - Physical Fitness Services (Act 165 of 1985),
        - Pawnbrokers (Act 491 of 1988),
        - Mortgage Loan Brokers (Act 544 of 1988),
        - Telephone Solicitations (Act 656 of 1988),
        - Express Warranties on Motor Vehicles (Act 142 of 1989),
        - Athlete Agents (Act 456 of 1990; Act No. 300 of 2004),
        - Motor Vehicle Subleasing (Act 131 of 1991),
        - Loan Brokers (Act 452 of 1992),
        - Motor Fuel Pricing (Act 161 of 1993),
        - Prize Promotions (Act 483 of 1994),
        - Prepaid Legal Services (Act 328 of 2000),
        - Consumer Credit Counseling (Act 111 of 2005)
    - The division also provides consumer law guidance to the financial industry, magistrates, attorneys, and law enforcement agencies, and serves as the legal counsel for the Board of Financial Institution's Consumer Finance Division, of which we will discuss later on in this lesson.

As you can see, the South Carolina Department of Consumer Affairs has many responsibilities and handles various different aspects pertaining to the financial sector in an effort to protect South Carolina's consumers. Another important regulatory office is that of the South Carolina State Board of Financial Institutions. We will review its responsibilities and structure next.

South Carolina State Board of Financial Institutions

The South Carolina State Board of Financial Institutions (the Board) is another important office in South Carolina pertaining to consumer protection. According to their website, the South Carolina Board of Financial Institutions' mission is to serve the people of South Carolina by preserving a sound financial community and protecting the borrowing public by ensuring that the state banking and consumer finance laws and regulations are followed. The State Board is responsible for the supervision, licensing, and examination of:

- All State chartered banks
- Savings and loans associations
- Savings banks
- Credit unions
- Trust companies

- Development corporations
- Consumer finance companies
- Deferred presentment companies
- Check cashing companies

Title 34 of South Carolina's Code of Laws establishes the South Carolina State Board of Financial Institutions. Title 34 Section 34-1-20 details the structure of the Board.

- The Board is composed of eleven members.
- Members of the Board cannot serve more than two consecutive four-year terms.
- The code denotes requirements that must be met in order to be appointed to the board:
    - One of the members is the State Treasurer who also is the chairman of the Board.
    - The rest of the members of the Board are appointed by the Governor with the advice and consent of the Senate.
    - Four of the members must be involved in banking and recommended by the South Carolina Bankers Association.
    - One of the members must be recommended by the association of supervised lenders.
    - One of the members must be engaged in the mortgage lending business and recommended by the Mortgage Banker Associations of the Carolinas.
    - One of the members must be engaged in the licensed consumer finance business as a restricted lender or a supervised lender and recommended by the Independent Consumer Finance Association.
    - Two of the members must be engaged in the cooperative credit union business and recommended by the State Cooperative Credit Union League.
    - One of the members must not be affiliated with a financial organization and serve as a representative of the consumers in the South Carolina.

Title 34, Chapter 1, entitled State Board of Financial Institutions, refers to the Board and states that it has the power to supervise all banks and building and loan associations and provide regulations and instructions for the direction, control and protection of all such institutions, the conservation of their assets and the liquidation thereof [§34-1-60].

Additionally, no bank, building and loan association, savings and loan association or savings bank can be granted a charter of be established without the written approval of the Board [§34-1-70].

If a bank, building and loan association, savings and loan association, or savings bank wants to become established, it is up to the Board to commence an investigation and determine whether the applicant is qualified to operate the institution, has complied with the law, and whether they would serve the public interest. Furthermore, the Board must conduct an annual study regarding the capital reserve position of all financial institutions and intermediaries subject to its supervision and report its findings to the General Assembly. The Board must include any recommended legislation within the report to the General Assembly [§34-1-130].

Title 34 also denotes that the Board must have an examining department. The Board must appoint a Commissioner of Banking that will be in charge of the examining department. It is the Commissioner of Banking that reports criminal violations to the Board [§34-1-90].

If anyone is deemed guilty of obstructing the Commissioner of Banking or his assistants, he or she will be subject to imprisonment for no more than one year, or fined no more than one thousand dollars, or both, in the discretion of the court [§34-1-120].

It is the South Carolina State Board of Financial Institutions that legally permits mortgage lenders and loan originators operating pursuant to a license to make mortgage loans, to engage in a mortgage lending activity authorized for licensed mortgage lender and loan originators by law or by regulation of an agency given supervisory authority over those institutions [§34-1-110 (A)(5)].

In fact, the Board is given a lot of legal power to permit various financing related activity. The Board, by law, may permit all of the following: [§34-1-110 (A)(1)(2)(3)(4)(5)(B)]

- State-chartered banks to engage in any activity authorized for national banks and by federal law or regulation of the Comptroller of the Currency or for state-chartered savings and loan associations by this title [34] or regulation or operational instruction of the State Board of Financial Institutions

- State-chartered savings and loan associations to engage in any activity authorized by federally chartered savings and loan associations by federal law or regulation of the Office of Thrift Supervisions or for the state-chartered banks by this title [34] or regulation or operational instruction of the State Board of Financial Institutions
- Cooperative credit unions to engage in any activity authorized for federally chartered credit unions by federal law or by regulation of the National Credit Union Administration
- Consumer finance companies operating pursuant to a license to make supervised loans as provided in Part 5, Chapter 3, Title 37, to engage in any lending activity authorized for supervised financial organizations by law or by regulation of any agency given supervisory authority over those institutions, except where otherwise restricted by statute
- The Board permits mortgage lenders and loan originators operating pursuant to a license to make mortgage loans as provided in Chapter 22, Title 37, to engage in a mortgage lending activity authorized for licensed mortgage lenders and loan originators by law or an agency given supervisory authority over those institutions, except where otherwise restricted by statute.

As you can see, the South Carolina State Board of Financial Institutions is entrusted with a lot of responsibility. In order to oversee and complete all that the Board is responsible for, the Board is efficiently divided into two parts. The Boards website (www.bofi.sc.gov) summarizes the division as follows:

- The Banking Division - supervises and regulates State chartered banks, trust companies, savings banks, and credit unions.
- The Consumer Finance Division - is responsible for regulating licensing and compliance examination for non-depository consumer lending, deferred presentments services, check cashing, mortgage lending, mortgage servicing and all of their employees doing loan originating or loan modification activity.
    - The following must be licensed by the Consumer Finance Division:
        - Consumer loans made by non-bank/depository institutions with interest rates exceeding 12% APR
        - A person engaging in the business of deferred resentment services (payday lending)
        - Non-depository entities performing check cashing activities where fees are charged or other consideration is made
        - Mortgage lending or servicing by non-depository entities
        - Subsidiaries of depository institutions that are not entirely owned and regulated by one of the federal banking agencies
        - Loan originators employed by licensed lenders/servicers

The Board, just as the Department, plays a large role in matters pertaining to mortgage lending and licensing in the state of South Carolina. Both of these institutions are responsible for various aspects of the process of receiving and keeping a mortgage loan originator license.

Officially, the South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators. The South Carolina Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and it regulates mortgage broker loan originators.

It depends on the type of business operations which licensing jurisdiction, whether the Department of Consumer Affairs or the State Board of Financial Institutions, the individual will belong to.

We will delve into what these regulations look like with regards to applying for, obtaining, and maintaining a license as a mortgage loan originator later in the course. For now, we will go over the various Acts enacted that provide the requirements that both of these offices enforce and monitor when it comes to mortgage lending, licensing, and overall consumer protection. We will turn to these laws next.

South Carolina Law and Regulation Definitions - The South Carolina Mortgage Lending Act

The South Carolina Mortgage Lending Act is now part of the South Carolina Consumer Protection Code, or Title 37. Chapter 22 of Title 37 contains the regulations pertaining to Mortgage Lending. We will discuss these here. If you would like to access the law itself, it can be accessed through the South Carolina Legislature website: www.scstatehouse.gov.

Before we get into what the law states about mortgage lending and licensing itself in South Carolina, we should review some of the terminology and its legal definitions that we will encounter while discussing this law and many other laws

pertaining to mortgage lending. These definitions can be found in Chapter 22 of the Consumer Protection Code. The following provides the legal definition to terminology that is most commonly used in the mortgage industry as it is intended to be defined in the state of South Carolina.

For the purposes of South Carolina law regarding mortgage lending:

- *"Act as a mortgage broker"* means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:
  - (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,
  - (ii) engaging in table funding of a mortgage loan, or
  - (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. "Act as a mortgage broker" also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b). [§37-22-110(1)]
- "*Act as a mortgage lender*" means to engage in the business of making or servicing a mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan. [§37-22-110 (2)]
- "Board" means the State Board of Financial Institutions [[§37-22-110(6)].
- "Borrower" means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person's ownership interest in the dwelling is or is to be subject to the security interest [§37-22-110(7)].
- "Branch manager" means the natural person who is in charge of and who is responsible for the business operations of a branch office of a licensee
  [§37-22-110(8)].
- "Branch office" means an office of the licensee that is separate and distinct from the licensee's principal office [§37-22-110(9)].
- "Clerical or support duties" mean administrative functions after the receipt of an application by a licensed mortgage originator or lender, such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include [§37-22-110(10)(a)(b)]:
  - the receipt, collection, and distribution common for the processing or underwriting of a residential mortgage loan; or
  - any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- "Commissioner" means the designee of the State Board of Financial Institutions for the purposes of licensing and regulation of mortgage lenders and mortgage loan originators pursuant to this chapter [§37-22-110(11)].
- "Employee" means a natural person who has an employment relationship, acknowledged by both the natural person and the mortgage lender, and is treated like an employee for purposes of compliance with the federal income tax laws
  [§37-22-110(15)].
- "Exempt person" means: [§37-22-110(18)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]
  - an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
  - a depository institution or subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
  - an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when actin gin the scope of employment for the exempt person;

- a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;
- an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
    - a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or
    - any other person deemed exempt pursuant to the Secure and Fair Enforcement Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

- "Individual servicing a mortgage loan" means an employee of a mortgage lender licensed in South Carolina that: [§37-22-110(22)(a)(b)(c)]
    - collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage;
    - works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or
    - otherwise finalizes collection through the foreclosure process.
- "Licensee" means a person who is licensed pursuant to this chapter [§37-22-110(23)].
- "Loan correspondent" means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan: [§37-22-110 (25(a)(b)(c)]
    - underwrite the mortgage loan written by their employees;
    - approve the mortgage loan; and
    - fund the mortgage loan utilizing an unrestricted warehouse or credit line
    - A loan correspondent is not a mortgage lender

    (This particular definition was added to this chapter after the Mortgage Lending Act was amended)

- "Loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan.
    - The definition of "loan originator" does not include an exempt person described in item (18) or a person solely involved in extensions of credit relating to timeshare plants, as that term is defined in Section 101(53D) of Title 11, United States Code.
    - The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are "loan originators" as that term is defined in the SAFE ACT pursuant to Section 1508 of Title V of the housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator. [§37-22-110 (26)]
- "Mortgage broker" means a person who acts as a mortgage broker, as that term is defined in time (1)" [§37-22-110].

- “Registered loan originator” means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by the federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the National Mortgage Licensing System and Registry. [§37-22-110(36)]

The definitions that we just reviewed, which are included in the South Carolina Mortgage Lending Act, are important for the understanding of certain laws and regulations that pertain to mortgage lending in South Carolina.

The South Carolina Mortgage Lending Act of 2009 not only provides definitions to some of the more important terms in the mortgage lending industry, it also provides the requisites to become a licensed mortgage lender, loan originator, or someone acting as a mortgage lender.

The South Carolina Mortgage Lending Act explains that it is unlawful for a person, other than an exempt person, doing business in South Carolina to: [§37-22-120A(1)(2)]

- act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title; or
- circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of this chapter

The law also states that it is unlawful for a person to employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to this chapter. An exempt person is not subject to this subsection. [§37-22-120(B)]

The license of a loan originator is not effective during a period that the person is not employed by a mortgage lender licensed pursuant to this chapter. [§37-22-120(C)]

If a loan originator ceases to be employed by a mortgage lender licensed pursuant to this chapter, the loan originator and the mortgage lender by whom that person is employed promptly shall notify the commissioner in writing. The mortgage lender’s notice must include a statement of the specific reason or reasons for the termination of the loan originator’s employment. The reason for termination is confidential information and must not be released to the public. [§37-22-120(D)]

A loan originator must not be employed simultaneously by more than one mortgage lender licensed pursuant to this chapter. [§37-22-120(E)]

Independent contractors, except for exempt persons, must be licensed separately. Processors and underwriters who are independent contractors must be licensed as provided in section 37-22-110(34)(c). [§37-22-120(F)]

Aside from providing definitions to important terminology and the requirements for licensing of a mortgage lender or loan originator, the law also delineates reasons for revocation suspension, and termination of a license.

The South Carolina Mortgage Lending Act also provides a list of prohibited activities and demands participation in the national mortgage registry.

It also specifies that the act can be enforced by the commissioner of the Consumer Finance Division of the Board of Financial Institutions. On May 19, 2017, amendments were made to the South Carolina Mortgage Lending Act, which went into effect on September 1, 2017. The amendments include, among others,

- the addition of the definition of “loan correspondent” to the list of defined terminology in the act;
- updated the pre-licensing and continuing education requirements for mortgage loan originators;
- placed new requirements on surety bond amounts;
- enabled a mortgage loan originator’s residence be deemed a branch office, and
- reconciled the term “exempt person” with persons deemed exempt in the federal SAFE Act.

It was this amendment that added the requirement for South Carolina Law content in both pre-licensing and continuing education for mortgage loan originators.

We will be delving into the details the South Carolina Mortgage Lending Act provides for mortgage loan originator license requirements, qualifications, and the application process later in the course.

South Carolina Law and Regulation Definitions - The High Cost and Consumer Home Loan Act

Another important act in South Carolina pertaining to mortgage lending is the High Cost and Consumer Home Loan Act.

- The Act was added to the Consumer Protection Code, or Title 37, under Chapter 23 in 2003.
- The Act sets up protections for South Carolina homeowners and creates a category for high cost home mortgages with a threshold.
- The Act also provides definitions for relevant terminology. We will review some of these terms first and then discuss the provisions of the Act.

According to the High Cost and Consumer Home Loans Act: [§37-23-20]:

- "Affiliate" means a company that controls, is controlled by, or is under common control with another company, as described in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841, et seq.), as amended [§37-23-20(1)].
- "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.) and the regulations promulgated under it by the Federal Reserve Board, both as amended [§37-23-20(2)].
- "Broker" or "mortgage broker" means a person or organization in the business of soliciting, processing, placing, or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others. A broker or mortgage broker also includes a person or organization who brings borrowers or lenders together to obtain mortgage loans or renders a settlement services. [§37-23-20(3)]
- "Consumer home loan" means a loan in which: [§37-23-20(4)(a)(b)(c)]
    - the borrower is a natural person;
    - the debt is incurred by the borrower primarily for personal, family, or household purposes; and
    - the loan is secured by a mortgage on real estate upon which is located or is to be located a structure designed principally for occupancy of from one to four families and that is or is to be occupied by the borrower as the borrower's principal dwelling.
- "Conventional conforming discount points" means loan discount points knowingly paid by the borrower for the purposes of reducing, and which in fact result in a bona fide reduction of, the interest rate applicable to the loan, so long as the home loan has an annual percentage rate that does not exceed the conventional mortgage rate by more than one percentage point [§37-23-20(5)]
- "Conventional mortgage rate" means the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater [§37-23-20(6)]
- "Conventional prepayment penalty" means a prepayment penalty or fee that may be collected or charged in a home loan and that is authorized by law other than by this chapter, provided the home loan (a)does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and (b) does not permit prepayment fees or penalties that exceed two percent of the amount prepaid [§37-23-20(7)]
- "Flipping" a consumer home loan means the making of a consumer home loan that refinances within forty-two months an existing consumer home loan of the borrower when the new loan does not have a reasonable, tangible net benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. [§37-23-30(8)].
- "High-cost home loan" means: [§37-23-20(9)(a)(i)(ii)(iii)(iv)(v)(b)]
    - a loan, other than an open-end credit plan or a reverse mortgage transaction, in which the:
        - principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association;
        - borrower is a natural person;
        - debt is incurred by the borrower primarily for personal, family, or household purposes;

- loan is secured by either a security interest in a residential manufactured home, as defined in Section 37-1-201(24) which is to be occupied by the borrower as the borrower's principal dwelling, or a mortgage on real estate upon which there is located or there is to be located a structure designed principally for occupancy from one to four families and which is or is to be occupied by the borrower as the borrower's principal dwelling; and
- terms of the loan exceed one or more of the thresholds as defined in item (15); or
- be an adjustable rate mortgage at the fully indexed rate assuming a fully amortizing repayment schedule that would exceed one more of the thresholds as defined in item (15)

- "Obligor" means each borrower, co-borrower, cosigner, or guarantor obligated to repay the loan [§37-23-20(11)]
- "points and fees" means: [§37-23-20 (13)(a)(b)(c)(d)]
  - items required to be disclosed pursuant to Sections 226.4(a) and 226.4(b) of Title 12 of Code of Federal Regulations, as amended, except interest or the time-price differential;
  - charges for items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";
  - compensation paid directly by the borrower to a mortgage broker not otherwise included in the subitem (a) or (b);
  - the maximum prepayment fees and penalties that may be charged or collected pursuant to the terms of the loan documents. Interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government-sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, is not considered a prepayment fee or penalty
- "Threshold" means either (A) or (B) in a loan transaction, whichever is applicable: [§37-23-20(15)(A)(B)(i)(ii)(iii)(C)(i)(ii)(iii)]
  - *(A)* Without regard to whether the loan transaction is a "residential mortgage transaction" as the term "residential mortgage transaction" is defined in Section 226.2 (a)(24 of Title 12 of the Code of Federal Regulations, as amended, the annual percentage rate of the loan at the time the loan is consummated is such a rate that the loan is considered to be a "mortgage" pursuant to Section 152 of the Home Ownership and Equity Protection Act of 1994, as amended, and regulations adopted pursuant to it by the Federal Reserve Board, including Section 226.32 of Title 12 of the Code of Federal Regulations, as amended, except with regard to a mortgage or loan secured by a nonreal estate manufactured housing lien, the term "threshold" means the annual percentage rate of the nonreal estate secured manufactured housing line at the time the mortgage or loan is consummated exceeds by more than ten percentage points the yield on United States Treasury securities having comparable periods of maturity as of the fifteenth day of the month immediately preceding the month in which the application of extension of credit is received by the lender;
  - *(B)* the total points and fees payable by the borrower at or before the loan closing exceed:
    - five percent of the total loan amount if the total loan amount is twenty thousand dollars or more;
    - the lesser of eight percent of the total loan amount or one thousand dollars if the total loan amount is less than twenty thousand dollars; or
    - three percent of the total loan amount for nonreal estate secured manufactured housing transactions if the total loan amount in the nonreal estate secured housing transaction is twenty thousand dollars or more;
  - *(C)* Except that the following discount points and prepayment fees and penalties are excluded from the calculation of the total points and fees payable to the borrower:
    - up to and including two conventional conforming discount points payable by the borrower in connection with the loan transaction but only if the interest rate from which the loan's interest rate is discounted does not exceed by more than one parentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which is greater; or

- up to and including one conventional conforming discount point payable by the borrower in connection with the loan transaction, but only fi the interest from which the loan's interest rate is discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal national Mortgage Association or Federal Home Loan Mortgage Corporation, whichever is greater;
- a conventional prepayment penalty.

The above terminology is important in order to understand what the High-Cost and Consumer Home Loan Act provides for the mortgage lending industry in South Carolina. Section 37-23-30 of the High-Cost and Consumer Home Loan Act denotes what a high-cost home loan agreement should and should not contain. A high-cost home loan agreement may **not** contain:

- a provision that allows the lender to call a loan at his or her discretion [§37-23-30(1)]
- a balloon payment [§37-23-30(2)]
- negative amortization [§37-23-30(3)]
- an increase in the rate after default [§37-23-30(4)]
- requirements of more than two periodic payments to the loan to be paid in advance from the loan proceeds provided to the borrower [§37-23-30(5)]
- a charge to the consumer for fees to modify, renew, extend, or amend a high-cost home loan [§37-23-30(6)]
- provide the consumer with a choice of law provisions to avoid South Carolina law [§37-23-30(7)]

The Act also provides limitations on lenders of high-cost home loans. The lender of a high-cost home loan may not:

- make a high-cost home loan without first receiving written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling on the advisability of the loan transaction
[§37-23-40(1)]
- provide a high-cost home loan without determining first whether the consumer can repay the loan [§37-23-40(2)]
- finance, directly or indirectly, prepayment penalties [§37-23-40(3)(a)]
- finance, directly or indirectly, more than 2.5 percent in points or fees [§37-23-40(3)(b)]
- charge fees or points to refinance a loan made by the lender [§37-23-40(4)]
- pay a contractor for a home improvement loan from the proceeds of a high-cost home loan [§37-23-40(5)]
    - the check must be payable jointly to the borrower and contractor
    [§37-23-40(5)(a)] or
    - through a third party escrow agent [§37-23-40(5)(b)]

Additionally, the High Cost and Consumer Home Loan Act protects consumer home loans by listing prohibited acts. According to section 37-23-70:

- A lender may not engage knowingly or intentionally in the unfair act or practice of "flipping" a consumer loan [§37-23-70(A)]
- Al lender may not finance directly or indirectly credit life, disability, debt cancellation, or unemployment insurance, or other life or health insurance premiums, except that insurance premiums calculated and paid on a monthly basis are not considered to be financed by the lender [§37-23-70(B)]
- A lender may not recommend or encourage default on an existing loan or other debt before and in connection with the closing planned or closing of a consumer home loan that refinances all or a portion of the existing loan or debt [§37-23-70(C)]
- At the time of application, the loan originator or mortgage broker must provide the consumer with information as to where the consumer can file a complaint
[§37-23-70(D)]

If a lender violates this section and is found to have committed one of the prohibited acts discussed above, he or she is subject to actual damages and a penalty in an amount determined by the court of no less than $1,500 and no more than $7,500 for each transaction. However, there is a statute of limitations of 6 years, after which the borrower may no longer bring action to the lender for the violation [§37-23-70(F)].

The Act also specifies the types of disclosures consumers must have access to during the lending process. These disclosures will help educate the consumer of what is occurring during the lending process.

At the time when the borrower receives the Loan Estimate (LE) and prior to the loan closing, the broker or mortgage broker must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form that includes the following: [§37-23-75 (A)(1)(2)(3)(4)]

- The dollar amount of the yield spread premium and the percentage yield spread premium in relation to the loan amount;
- An itemization of the dollar amounts for points, fees, and commissions with a combined total given
- Dollar amount total of both of the item above
- If the loan is an adjustable rate mortgage, the listing of the schedule for when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract.

The disclosure form must include a signature line for the borrower to acknowledge that he has received the disclosures and that they have been explained to him or her
[§37-23-75(B)].

Together, the above provisions help protect South Carolina consumers with regards to their mortgage loans.

Chapter 3 and Chapter 10 of the South Carolina Consumer Protection Code also add other provisions that enable the protection of consumers and their mortgage loans. We will turn to these next.

South Carolina Law and Regulation Definitions - Consumer Protection Code, Chapter 3 and Chapter 10

Chapter 3

Chapter 3 of South Carolina's Consumer Protection Code, or Title 37, focuses on loans. As such, it provides definitions of terminology having to do with loans.

According to Chapter 3 a "consumer loan" is:

- A loan made by a person regularly engaged in the business of making loans which: [§37-3-104(a)(b)(c)(d)]
    - A debtor is a person other than an organization;
    - The debt is incurred primarily for a personal, family, or household purpose;
    - Either the debt is payable in installments or a loan finance charge is made; and
    - Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.
- A consumer loan does not include a loan secured by a first lien or equivalent security interest in real estate [§37-3-105]

Chapter 3 defines "loan" to include:

- The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
- The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;
- The creation of debt pursuant to a lender credit card or similar arrangement; and
- The forbearance of debt arising from a loan. [§37-3-106]

Chapter 3 defines "Lender" to include an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment [§37-3-107(1)].

The chapter defines "principal" as the total of: [§37-3-107(3)(a)(b)(c)(i)(ii)]

- The net amount paid to, receivable by, or paid or payable for the account of the debtor;
- The amount of any discount excluded from the loan finance charge; and
- To the extent that payment is deferred:
  - Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in the net amount paid; and
  - Additional charges permitted by Chapter 3

Chapter 3 defines a "finance charge" as the sum of: [§37-3-109 (1)(a)(b)]

- all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including interest or any amount payable under a point, discount or other system of charges, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss
- charges incurred for investigating the collateral or creditworthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made but excluding fees and charges paid to persons registered as mortgage loan brokers.

The above definitions provide clarity regarding certain aspects pertaining to different loans, but Chapter 3 also includes provisions that allow lenders to do certain things during the lending process.

- Chapter 3 enables the lender to collect closing costs, including fees or premiums for title, appraisals, insurances, and fees and charges to persons registered as mortgage loan brokers. [§37-3-202(d)(i)(ii)(iii)(iv)(v)(e)(f)(2)].
- The chapter also enables a lender to refinance a borrower's loan, or "unpaid balance" and charge a finance charge for doing so. [§37-3-205].
- If a loan requires a rate schedule, it must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate [§37-3-305(2)]

Aside from allowing lenders to conduct themselves a certain way and providing clarity regarding some of the terminology important to the world of consumer loans, this Chapter includes other provisions that add accountability to those involved in mortgage lending.

Chapter 3 grants the State Board of Financial Institutions the authority to examine periodically the loans, businesses, and records of every licensee [§37-3-506(1)].

This means that at any point the South Carolina State Board of Financial Institutions can demand access to the offices, places of business, and records of any lender in order to determine whether the lender has acted in accordance to the law. Knowing that this is the case further motivates licensees to behave in accordance to South Carolina and Federal law.

Furthermore, Chapter 3 states that any provisions that conflict with the SAFE Act must be changed in order for them to be interpreted as those in the SAFE Act and that all disclosures and advertisements must be in compliance with the Truth-in-Lending Act [37-3-301, 304].

Chapter 10

Chapter 10 of the Consumer Protection Code deals with "miscellaneous loan provisions." This Chapter contains additional provisions regarding loans that were not covered in Chapter 3 and other chapters in Title 37.

Chapter 10 states that prior to closing a loan, the creditor must know the borrower's preference for an attorney that will represent him or her in the closing of the loan. The creditor must do the same regarding the borrower's insurance agent for both hazard and flood insurance. [§37-10-102(a)] In order to comply with such, the creditor has the following options:

- He or she can include the preference information on the credit application [§37-10-102(1)]
- Provide written notice to the borrower with the information when the notice is being delivered no later than 3 days after the application is received [§37-10-102(2)]

This provision enables the consumer to be in charge of decision-making regarding the costs associated with representation in both the loan itself and the home. The consumer has the right to shop around for these services and does not need the permission of the creditor to pick his or her attorney or insurance agent.

Furthermore, a consumer is not punished for paying his or her debt in full. Chapter 10 states that for loans of 150,000 dollars or less, a debtor can prepay in full the debt without incurring any penalty as long as the debt is represented by a personal, family, or household purpose loan agreement that is secured in whole or in party by a first or junior lien on real estate and the aggregate of all sums advanced does not exceed 150,000 dollars.
[§37-10-103]

If a loan is agricultural in its purpose or under 25,000 dollars, and the debtor wants to prepay in full, the maximum loan finance charge that is allowed is 18% per annum, calculated according to the actuarial method. [§37-10-104]

This chapter also provides an additional protection to the consumer by denoting that the maximum rate of interest per year is 6%, except upon written contracts wherein, by express agreement, any interest may be charged.

The chapter also defines both the terms legal rate of interest and lawful rate of interest. Whenever the term legal rate of interest is used or lawful rate of interest in used in a contract it is meant to mean the rate specified in Section 34-31-20, which states that in all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum. [§34-31-20(A), §37-10-106(1)(2)]

If the provisions discussed above are in some way violated, the person violating the chapter can incur a penalty determined by the court of no less than $1,500 and no more than $7,000. The statute of limitations for the violation is 3 years. [§37-10-105]

Chapter 3 and Chapter 10 of the South Carolina Consumer Protection Code add to the protection of consumers by including provisions having to do with consumer loans that give more power to the consumer and add a level of accountability for mortgage lenders and brokers.

We have discussed different South Carolina laws pertaining to consumer protection. Next, we will discuss in more detail some of the provisions found in the Mortgage Lending Act and in South Carolina's Consumer Protection Code that pertains specifically to mortgage loan originators.

LESSON SUMMARY

There are two important regulatory offices in South Carolina:

- South Carolina Department of Consumer Affairs
- South Carolina State Board of Financial Institutions

In 1974, Title 37 established the South Carolina Department of consumer Affairs (SDCA or Department) - administers and enforces the Consumer Protection Code. The department helps:

- Formulate and modify consumer laws, policies and regulations
- Regulate the consumer credit marketplace
- Resolve complaints arising out of the production, promotion, and sale of consumer goods and services in the state (whether or not credit is involved)
- Promote a healthy competitive business climate with mutual confidence between buyers and sellers.

The Consumer Protection Code authorizes the South Carolina Department of Consumer Affairs to do the following:

- Analyze and mediate individual complaints
- Investigate business practices if a pattern of fraud is suspected
- Inform about complaints filed against a business
- Educate consumers about unfair and deceptive practices
- Take legal action to prevent persons from violating the Code and prohibit unconscionable conduct.

The Department is divided into 6 parts:

- Administration Division
- Consumer Services Division
- Consumer Advocacy Division

- Public Information and Education Division
- Identity Theft Division
- Legal Division

The South Carolina State Board of Financial Institution (the Board) serves the people of South Carolina by preserving a sound financial community and protecting the borrowing public by ensuring that state banking and consumer finance laws and regulations are followed.

Title 34, Chapter 1 gives The Board the responsibility of supervision, licensing, and examination of:

- All State chartered banks
- Savings and loans associations
- Savings banks
- Credit unions
- Trust companies
- Development corporations
- Consumer finance companies
- Deferred presentment companies
- Check cashing companies

The Board consists of 11 appointed members that cannot serve more than 2 consecutive 4-year terms.

The Board is divided into two parts:

- The Banking Division
- The Consumer Finance Division

The South Carolina Mortgage Lending Act

Chapter 22 of Title 37 contains the regulations pertaining to the Mortgage Lending Act.

The Act defines various terms associated with mortgage lending, including:

- act as a mortgage broker
- act as a mortgage lender
- board
- borrower
- branch manager
- branch office
- clerical or support duties
- commissioner
- employee
- exempt person
- individual servicing a mortgage loan
- licensee
- loan correspondent
- loan originator
- mortgage broker
- registered loan originator

The Mortgage Lending Act explains that it is unlawful for a person to act as a mortgage lender or circulate or use advertising without being licensed. It also makes it unlawful for someone to hire a loan originator unless that originator is licensed.

If a mortgage loan originator is not employed by a mortgage lender, his or her license is not effective.

A loan originator cannot be employed by two lenders at the same time.

The Mortgage Lending Act also provides the requirements for licensing and delineates reasons for revocation, suspension and termination of a license.

High Cost and Consumer Home Loan Act

The Act defines various terms associated with loans including:

- affiliate
- annual percentage rate
- broker
- consumer home loan
- conventional conforming discount points
- conventional mortgage rate
- conventional prepayment penalty
- flipping
- high-cost home loan
- obligor
- points and fees
- threshold

A high-cost home loan agreement cannot:

- allow the lender to call a loan at his or her discretion
- have a balloon payment
- have negative amortization
- increase the rate after default
- require more than two periodic payments in advance

The lender of a high-cost home loan cannot

- make the loan without receiving written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling regarding the loan
- provide a loan without first determining that the borrower can repay the loan
- finance prepayment penalties
- finance more than 2.5% in points and fees
- charge fees or points to refinance a loan
- pay a contractor for a home improvement loan from the proceeds of the loan

The Act also provides the following prohibited acts:

- a lender cannot engage in the unfair act or practice of "flipping"
- a lender cannot finance credit life, disability, debt cancellation, or unemployment insurance, or other life or health insurance premiums

- a lender cannot recommend or encourage default of existing loans or other debt
- the lender must provide the consumer with information as to where a consumer can file a complaint at the time of application

Any violation of this Act makes the lender subject to actual damages and a penalty determined by the court of no less than $1,500 and no more than $7,500 for each transaction.

The Act also specifies the types of disclosure consumers must have access to:

- When the consumer receives the Loan Estimate and before the loan closes, the broker must disclose in writing the amount being earned on the loan
- The disclosure must include:
    - The yield spread premium
    - Dollar amounts for points, fees, and commissions
    - Total amount for both of the above
    - If an ARM, the schedule for when the loan resets, listing of monthly payment owed for each changed that is allowed by the terms of the contract
    - Signature line for the borrower

Chapter 3 - Consumer Protection Code

Chapter 3 of Title 37 focuses on loans. It clarifies various terms relating to loans, including:

- Consumer loan
- Loan
- Lender
- Principal
- Finance charge

Chapter 3 also:

- Enables a lender to collect closing costs, including fees and premiums for title, appraisals, insurances, and fees and charges to persons registered as mortgage loan brokers.
- Enables lenders to refinance borrower's loans and charge a finance charge for doing so
- Grants the South Carolina State Board of Financial Institutions the authority to examine periodically the loans, businesses, and records of every licensee
- States that any provisions in conflict with the SAFE Act are to be changed to be in accordance to the SAFE Act
- States that all disclosures and advertisements must be in compliance with the Truth in Lending Act

Chapter 10-Consumer Protection Code

Chapter 10 of the Consumer Protection Code deals with "miscellaneous loan provisions."

Chapter 10 states that:

- Prior to closing, the creditor must know the borrower's preference for an attorney and insurance agent
    - The creditor can know this by either including the information during the credit application
    - Or including the information when the notice is being delivered to the borrower 3 days after the application is received
- A consumer cannot be punished for paying his or her debt in full
- If a loan is agricultural in purpose or under $25,000 and the consumer wants to prepay in full, the maximum loan finance charge allowable is 18% per annum

- The maximum rate of interest per year is 6%
- The term legal rate of interest or lawful rate of interest means 8 ¾ % per annum

Violating the provisions in this chapter can result in a penalty determined by the court of no less than $1,500 and no more than $7,000. The statute of limitations for bringing action to these violations is 3 years.

South Carolina State Content - Part 2

South Carolina License Law and Regulation

OVERVIEW

In this lesson we will review details on South Carolina laws and regulations pertaining to licensing. We will go over what activities the law states require a license, what is required of persons wanting to become licensed as mortgage loan originators or mortgage lenders, what makes a person qualified for a mortgage loan originator license as well what the application process to get a license is like in South Carolina. Additionally, we will review what the law states regarding maintaining a mortgage loan originator license once one is obtained. And finally, we will also go over what the laws and regulations state are the grounds for denying a license.

Learning Objectives

After reviewing this lesson, students should be able to:

- Know what activities require a mortgage loan originator license
- Understand what the law requires of persons wanting to become licensed as mortgage loan originators and what the application process is like for a license
- Know the requisites to maintain a mortgage loan originator license as well as the reasons for the denying of a license

South Carolina License Law and Regulation

Before we begin this lesson, it is important to understand that there are two main titles and chapters in the South Carolina Code of Laws that pertain to mortgage lending: Title 37, Chapter 22, and Title 40, Chapter 58. What we will be predominantly reviewing below is what the law denotes in Title 37, Chapter 22, which is the Mortgage Lending Act. However, Title 40, Chapter 58, or the Licensing of Mortgage Brokers Act is also relevant. Title 40, Chapter 58 contains provisions that are almost identical to those provisions in Title 37, Chapter 22.

Their main difference, however, is the fact that Chapter 22 places regulatory authority on the Commissioner of the Consumer Finance Division of the State Board of Financial Institutions and Chapter 58 places regulatory authority on the Administrator of the Department of Consumer Affairs.

As you will recall, from the last section, both of these offices are South Carolina's regulatory authority for mortgage lending in the state. The South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators, while the Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and mortgage broker loan originators.

South Carolina provides specific laws and regulations pertaining to mortgage loan originators. These laws and regulations include activities that require licensure. Before we move on to discuss these, let's reacquaint ourselves with what South Carolina law defines as a mortgage loan originator.

According to Chapter 22 of Title 37, also known as the Mortgage Lending Act, a loan originator means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition "loan originator" does not include an exempt person or a person solely involved in extensions of credit relating to timeshare plans. [§37-22-26]

This same chapter defines “act as a mortgage broker” to mean to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

(i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,

(ii) engaging in table funding of a mortgage loan, or

(iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

“Act as a mortgage broker” also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service. [§37-22-1].

Since we will be discussing what must occur in order to obtain a license in this lesson it is convenient that Chapter 22 also defines what a licensee means. A “licensee” is defined as someone who is licensed pursuant to Chapter 22.

Title 37, Chapter 22, Section 260 gives the commissioner of the South Carolina State Board of Financial Institutions the regulatory authority to create new provisions necessary to put into effect the purpose of the chapter. Using this regulatory authority in order to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and with HUD rules, the South Carolina State Board of Financial Institutions added Article 4, regulations 15-64. The addition of these regulations to previous lending law were meant to clarify existing provisions in Chapter 22 as well as to ensure that the provisions were in line with federal laws. To that end, these regulations also define some relevant terminology: [Article 4 §15-64 (A)(2)(3)(4)(5)]

- Day - means all calendar days including Saturdays, Sundays and legal public holidays
- Employee for the purposes of compliance with the federal tax laws- means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.
- Notice - means written notification received by the Commissioner within (7) days of any change except as defined in Section 37-22-180 (A), which states that a licensee shall report to the commissioner a change of address of the principal place of business or branch office at least 7 days before the change. (We will go over this section later in the lesson.)
- Prior Written Consent - means written consent given by the Commissioner authorizing a change of control prior to that change of control taking place. To request authorization from the Commissioner, all information regarding acquisition via stock purchase or other device must be sent to the Commissioner at least 30 days prior to the change of control.

The definitions above are important to understand what Chapter 22 states are activities that require a license as well as what the requisites are for becoming licensed and remaining licensed in South Carolina. We will now turn to the chapter’s provisions regarding licensing.

Persons Required to be Licensed

There are certain activities that persons cannot participate in if they are not licensed pursuant to Chapter 22. In the state of South Carolina, if you want to participate in the following activities, you must be a licensee [§37-22-120(A)(1)(2)(B)(C)]

- Act as a mortgage lender or, directly or indirectly engage in the business of a mortgage lender under any name or title
- Circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of Chapter 22
- Employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to Chapter 22
- Continue to conduct activities of a licensee if you are not employed by a mortgage lender that is licensed pursuant to Chapter 22

Thus, in accordance to state law, you must be a licensee if you want to participate in activities as a mortgage broker or lender. This includes advertising for any lending activity.

It is important to note that if you do obtain a license as a mortgage loan originator, but are not employed by a mortgage lender, you cannot practice mortgage origination activities. Additionally, Chapter 22 states that if you are licensed as a mortgage loan originator, but are not employed by a mortgage lender, you and the mortgage lender must notify the commissioner of the State Board of Financial Institutions in writing with a statement that explains the reasons for termination. [§37-22-120(D)] And, a loan originator must not be employed simultaneously by more than one mortgage lender that is licensed pursuant to Chapter 22. [§37-22-120(E)]

There are some exemptions to the above. Exempt persons are not required to have a license. In the last lesson, we reviewed what an "exempt person" means according to Chapter 22. Let's quickly review this again:

"Exempt person" means: [§37-22-110(18)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]

- an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
- a depository institution or subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
- an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when actin gin the scope of employment for the exempt person;
- a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;
- an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
    - a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or
    - any other person deemed exempt pursuant to the Secure and Fair Enforcement Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

The persons and activities mentioned above are not required to have a mortgage lending license or a loan originator license. However, aside from those deemed exempt, anyone wanting to engage in mortgage broker activities as well as those activities mentioned at the beginning of this lesson must have a license in order to do so in the state of South Carolina.

In order to obtain a license to participate in these activities, you must go through the license application process. Next, we will discuss what this entails.

<u>Licensee Qualifications and Application Process</u>

In order to obtain a mortgage loan originator license, an application for licensure must be filed with the commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions, on forms approved by the commissioner.

The Consumer Finance Division of the State Board of Financial Institutions focuses on regulating licensing and compliance examination for non-depository consumer lending, deferred presentment services, check cashing, mortgage lending, mortgage servicing and all of their employees doing loan originating or loan modifications. Thus, it is no surprise, that it is the commissioner of the Consumer Finance Division that is given a lot of authority in Chapter 22 when it comes to licensing in South Carolina; starting with the fact that applicants for licensure must submit their applications to him or her.

The application itself must include information that the commissioner considers necessary.

The following is information deemed necessary for the application of a license:
[§37-22-140(A)(1)(2)(3)(4)(i)(ii)(iii)(5)(6)(i)(ii)(iii)]

- name, address, and social security number or, if applicant, Employer Identification Number (EIN);
- form and place of organization, if applicable;
- proposed method of and locations for doing business, if applicable;
- qualification and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:
    - a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;
    - a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and
    - a conviction of, or plea of guilty or nolo contendere to a felony;
- financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and
- consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principle or a branch manager shall consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity:
    - by whom or by which the applicant is employed;
    - over which the applicant has control; or
    - as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

As stated above, along with the rest of the requisites, the applicant for licensure must undergo a national criminal record check, supported by fingerprints, by the FBI. The law states that the results of the checks must be reported to the commissioner and the Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges. The information gathered will be kept by the commissioner in accordance with applicable state and federal guidelines. [§37-22-240]

In addition to the above requirements, South Carolina law also requires that a person applying for licensure as a mortgage loan originator: [§37-22-140(B)(1)(2)(3)(4)(5)]

- have attained the age of at least 18 years;
- work for licensed mortgage lender;
- have satisfactorily completed pre-licensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content;
    - an applicant must pass the national test
    - if the applicant fails the test the applicant can retake the test as follows
        - After initial fail, applicant must wait 30 days before retaking the exam
        - After second attempt, applicant must wait 30 days before retaking the exam
        - After third attempt, the applicant must wait 180 days prior to retaking the exam

- have never had a loan originator license revoked in any governmental jurisdiction; and
- have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application of licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

So long as the applicant meets the legal requirements above, he or she should have no impediment in obtaining a license as a mortgage loan originator.

If the applicant is applying for licensure as a mortgage lender, the applicant must comply with the following at the time of application and all times after that:
[§37-22-140(C)(1)(2)(3)(4)(5)]

- If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.
- If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described above
- If the applicant is a corporation, at least one of its principal officers shall have the experience described above
- If the applicant is a limited liability company, at least one of its members or managers shall have the experience described above
- Instead of showing three years experience, an applicant may show proof of three years employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

These applicants must also identify one person meeting the above requirements to serve as their managing principal [§37-22-140(D)].

Though we have already reviewed a lot of the legal requisites for licensure, we have yet to mention some of the financial requirements posited by law on those that want to become licensed. Applying for a license does come with certain financial requisites and responsibilities.

When applying for licensure, whether as a mortgage lender or a mortgage loan originator, each applicant must pay a filling fee. [§37-22-140(E)]

- If the application is for licensure as a mortgage lender, the filing fee is set at $1,000.00
- If the application is for a mortgage loan originator, the filing fee is $50.00
    - These filing fees are in addition to the cost associated with obtaining credit reports and national fingerprint-based criminal history record checks.
    - And, if a loan originator changes employment a new license must be issued for a fee of $25.00

Aside from a filing fee, there are also surety bond requisites mandated by the law. A surety bond is a legally binding contract that ensures the parties involved will meet their obligations. The surety bond is usually a three-way agreement between the principal, person who needs the bond, an obligee, person who requires the bond, and a surety company that sells the bond. The bond is meant to serve as a guarantee that the principal will do as required. If the principal does not, the bond will cover the outcome. A mortgage lender must post and maintain a surety bond in the amount determined by the commissioner of the South Carolina State Board of Financial Institutions. The amount is based on the total dollar amount of a mortgage loan subject to regulation by the commissioner in a calendar year pursuant to the following: [§37-22-140(F)]

- Dollar volume of mortgage loans from $0-$49,999,999, surety bond of $50,000
- Dollar volume of mortgage loans from $50,000,000 to $249,999,999, surety bond of $100,000
- Dollar volume of mortgage loans greater than $250,000,000 surety bond of $150,000

According to state law the surety bond of a mortgage lender can never be less than $50,000. The surety bond itself must be executed by a surety company authorized by South Carolina state law. The surety bond must also be executed to the commissioner and must be for the use of the State for the recovery expenses, fines, and fees, or any of them, levied pursuant to Chapter 22 and for consumers who have losses or damages as a result of noncompliance with Chapter 22 by the mortgage lender. The full amount of the surety bond must be in effect at all times. Unless a new bond is filed with the surety company prior to the termination of the previous surety bond, the licensee's license is considered terminated. If the licensees license expires based on bond termination, all licensed activity must stop, and the person must apply for a license again.

Additionally, any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements to obtain a license, upon payment of the applicable fee, meets the qualifications necessary to obtain a license as a loan originator. [§37-22-140(G)]

With regards to licensed mortgage lenders, each principal office and individual branch offices must be licensed pursuant to Chapter 22 and have individual licenses issued. A licensed mortgage lender must file an application form with the commissioner that identifies the address of the principal office and each branch office as well as the offices' branch managers. If necessary, the commissioner can license a personal residence of a loan originator as a branch office if it is located more than 70 miles from a commercial branch office location. The licensee fee for each branch office is $150.00. [§37-22-140(H)]

We have so far mentioned the need for a license as a mortgage loan originator as well as a license for a mortgage lender, but what of those persons that act as both? The law states that a person who obtains a license as a mortgage lender, upon notice of the commissioner on a form prescribed by the commissioner, may act as a mortgage broker. However, there are times where mortgage lenders will act as mortgage brokers. The law states that a mortgage lender that also acts as a mortgage broker is not required to obtain a license as a mortgage broker, unless the person acts as a mortgage broker with regard to the majority of the mortgage loans reported on their Mortgage Call Report filed during the previous two quarters. [§37-22-140(K)]. Thus, if a mortgage lender predominantly acts as a mortgage broker, he or she needs a license as a broker. Furthermore, a mortgage lender acting as a mortgage broker must comply with the South Carolina Licensing of Mortgage Brokers Act, which states the different prohibited activities for someone who is a licensed mortgage broker and provides details as to how a mortgage broker should conduct themselves and their business. We will delve into the provisions of the Licensing of Mortgage Brokers Act (or Title 40, Chapter 58 of the South Carolina Code of Law) in the next lesson.

So as to keep distance from what an individual does while licensed versus what the government officially approves of or does not approve of, one of the provisions in Chapter 22 makes it a point to state that the fact that a licensee has been issued a license pursuant to the laws of the state does not mean that his or her services are approved by the State or state agency [§37-22-140(J)].

> It is important to note that when completing and submitting your application along with other documentation, if any of the information provided and filed with the commissioner becomes inaccurate or incomplete, the licensee must promptly file a correcting amendment to the information contained in the document. [§37-22-140(M)]

Overall, the law denotes that if the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and warrant belief that the business is to be operated honestly, fairly and efficiently, the commissioner can issue a license to the applicant. However, if the commissioner does not believe this to be the case in part or it its entirety, the commissioner can refuse to license the applicant and must notify him or her of the denial. [§37-22-140(I)] Therefore, the law really does leave it up to the commissioner to decide whether he or she believes an applicant should be licensed or not. Later in this lesson we will go into detail about what constitutes grounds for denying a license. Let's first discuss what the law states is necessary in order to maintain a license.

License Maintenance

Aside from the financial responsibility of the application fee and the surety bond when qualifying or applying for licensure as a mortgage loan originator or mortgage lender, there are also other financial responsibilities and other requirements that the applicant or licensee must meet in order to maintain their license. We will turn to these next.

Chapter 22 explains that all licenses issued by the commissioner of the South Carolina State Board of Financial Institutions expire annually on the thirty-first day of December or on another date that the commissioner determines. This means that licensees must renew their license every year if they want to continue to practice mortgage loan originator activities that require a license in the state of South Carolina. The renewal period for licensees is from November first through December thirty-first annually or it can be another date that the commissioner sets. A licensee that wants to renew his or her license must submit an application to the commissioner in order to do so. Applications that are received after the renewal due date are considered late and subject to a late fee.
[§37-22-150(A)(1)(2)]

According to Chapter 22, licenses can be renewed by paying to the commissioner a renewal fee as prescribed by the Board for each of the following:

- For a licensed mortgage lender, an annual renewal fee of no more than $800 and no more than $150 for each branch office
- For a licensed loan originator, the renewal fee is no more than $50.00

If a license for a licensed mortgage lender is not renewed by the renewal date, a late fee of no more than $500 as prescribed to the Board must be assessed. If a license for a licensed mortgage loan originator is not renewed during the renewal period, a late fee of no more that $100 as prescribed by the Board must be assessed as a late fee. However, if the licensee fails to renew his or her license within 30 days after the date the license expires or fails to maintain a valid license, the commissioner will require that the licensee comply with the requirements denoted by law for obtaining an initial license as well as pay the fee that has accrued. [§37-22-150(B)]

> *A good rule of thumb: always renew your license on time every year in order to avoid paying a fee or eventually having to go through the license application process all over again.*

The law also states that at any time, the commissioner can require each person with a license to furnish a national fingerprint-based criminal history check and a set of fingerprints in a form acceptable to the commissioner. If a person refuses to do so, it could constitute grounds for the commissioner to deny the licensee's license renewal as well as to refuse the renewal of the license of the person by which he or she is employed, over which he or she has control, or which he or she is the current or proposed managing principal or branch manager. [§37-22-150(C)]

Aside from a renewal fee, in order to renew a license as a mortgage loan originator there are yearly requirements the licensee must meet. To renew a license:
[§37-22-160(A)(B)(C)(D)]

- A licensee must complete at least 8 hours of continuing professional education every year
  - Continuing education must include at least 1 hour of South Carolina Laws and Regulations
  - The completion of the continuing professional education must be reported to the commissioner every year
  - Licensees must maintain documentation of all courses completed
  - Documentation of the courses completed is subject to inspection by the commissioner for up to two years after the date of course completion
- Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.
- If a licensee fails to complete the continuing professional education before the license expiration date, his or her license expires and he or she will have to pay a penalty of no more than $100.00 in addition to other fees that may have accrued.

It is important to note that all pre-licensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry before credit can be given to applicants or licensees. Applicants and licensees that successfully complete education or testing approved through the NMLS fulfill requirements of this State.

The law also imposes other responsibilities on licensees in order to maintain a license in good standing. For example: there are certain records that licensees must keep and certain information they must report while conducting everyday loan originating activities. A licensee must make and keep accounts, correspondence, memoranda, papers, books, and other records prescribed by the commissioner. [§37-22-210(C)(D), §40-58-65 (A)]

Licensees must preserve their records for at least 3 years, unless the commissioner says otherwise. These records are important and must be safely maintained. A licensee should develop, maintain, and test disaster recovery plans for all records that are maintained. If the records are somehow misplaced, incomplete or destroyed, the licensee could be subject to disciplinary action.

State law states that if a licensee chooses to maintain their records electronically, they can do so as long as these electronic records can be readily accessible for examination by the commissioner at any time. [§37-22-210(C)(1)(2)(D)].

In addition to the maintenance of the records just mentioned, licensees must also keep records in the form of a Mortgage Log. The Mortgage Log must contain the following information:

- Credit score of borrower
- Adjustable or fixed type of loan
- Term of loan
- Annual percentage rate of the loan
- Appraised value of the collateral

On the 31st of March of each year, each licensee must submit their mortgage log to the commissioner. If the licensee is late in their submission or the submission is incomplete, they are responsible for paying a fine of $100.00 per day it is late or remains incomplete. The compilation of data received by the commissioner will then be organized and submitted to the Department where it will be prepared and made available to the public. This report will become available on June 13 of every year. A licensee must submit a correcting amendment to the information given to the commissioner if the information becomes incomplete or inaccurate.

As stated in the beginning of the lesson, the State Board of Financial Institutions put into place Article 4 Regulations 15-64 in an effort to add and clarify some of the provisions in Chapter 22. Pursuant to Section 37-22-210, regulations in Article 4 state that the Mortgage Log required of licensees must: [Article 4 Reg.15-64(D)(1)(a)(b)]

- Be completed electronically as required by the Consumer Finance Division. The Licensee is responsible for the costs associated with doing so.
- Include all mortgage loans or applications where a credit report is requested, regardless of whether a mortgage loan is originated or modified.

Additionally, Section 37-22-220 states that licensees must maintain records in a way that helps the commissioner determine whether the licensee is complying with the provisions of Chapter 22 and with federal laws. The recordkeeping system of a licensee will be deemed sufficient so long as the required information is available. These records do not need to be kept in the place of business where loans are made if the commissioner is given free and full access to the records wherever they may be. By March 31st of each year, licensees must file an annual report relating to all the mortgage loans made, serviced, or brokered. The report should include the following information:

- First and subordinate lien loans originated by licensee and closed in the name of another party;
- First and subordinate line loans originated by another party and closed in the name of licensee;
- First and subordinate lien loans originated by and closed in the name of licensee;
- First and subordinate lien loans originated by and closed in the name of another party but funded by licensee;
- Loans purchased by licensee;
- First and subordinate lien loans serviced by licensee;
- Loans owned with and without servicing rights;
- Loans sold with and without servicing rights;
- Loans paid off before and at maturity;
- Unpaid loans at the beginning and end of the reporting year;
- Delinquent loans that are 30-59, 60-89, and ninety days or more delinquent, of all the loans the licensee owned as of December 31st
- Loans in foreclosure as of December 31st and foreclosed in the previous calendar year by licensee;
- Mortgage loans charged against reserve for loan losses as a result of foreclosures during the reporting year; and
- Loans repurchased during the previous calendar year

The annual report must also include the total gross revenue earned in the State under the license, the total dollar amount of points paid to the licensee by borrowers first and subordinate lien mortgage loans, total dollar amount of points paid to brokers by the licensee on first and subordinate lien mortgage loans, including yield spread premiums, and the lending institution, maximum amount available, outstanding balance, and expiration date of licensee's four largest warehouse lines of credit during the previous calendar year. [§37-22-220 (A)(B)(C)(1)(2)(3)(4)(5)(6)(7)(7)(9)(10)(11)(12)(13)(14)(D)].

The State Board of Financial Institutions' Article 4, Regulations 15-64 adds to this section of Chapter 22 the following:

- The annual report required by §37-22-220 must include a Mortgage Call Report that includes: [Article Reg.15-64(D)(2)(a)(b)]
    - A loan activity report submitted electronically on a quarterly basis as required by the Nationwide Mortgage Licensing System and Registry by the mortgage lender or servicer for all locations and loan originators
    - A corresponding financial condition report submitted electronically as required by the Nationwide Mortgage Licensing System and Registry.

As already noted earlier, Section 37-22-140(M) states that if any information contained in a document submitted to the commissioner becomes inaccurate or incomplete, the licensee must promptly file a correcting amendment with the commissioner. Article 4 states that, pursuant to this provision, the applicant must supply the required information to the Consumer Finance Division of the South Carolina State Board of Financial Institutions within 120 days of the initial submission or the application will be abandoned as incomplete. [Article 4 Reg.15-64(E)]. Thus, "promptly" in this case means that the correcting amendment must be filed with the commissioner within 120 days of the original submission.

In addition to keeping records of their activity and in an effort for licensees to be held accountable for their actions and to reduce the incidence of mortgage fraud, the law also mandates that licensees must always clearly display the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry on all mortgage loan forms, solicitations, or advertisements including business cards or websites and any other documents furnished in connection with a mortgage loan transaction. [§37-22-210(F)] By doing so, it is easy for consumers to look up the licensee's activity history as well as enabling the records of their transactions to be tracked down. Overall, this requirement on licensees is intended to bring a new level of security to the prevention of fraud in the mortgage industry.

Article 4, Regulations 15-64 adds that The Nationwide Mortgage Licensing System and Registry unique identifier for licensed mortgage lenders or servicers, licensed branch offices, and licensed mortgage loan originators must be displayed on all mortgage loan applications. However, only the unique identifier of the licensed mortgage lender or servicer is required to be displayed on all other mortgage loan forms. The unique identifier of a licensed mortgage lender or servicer or licensed mortgage loan originator must also be used in all advertising. [Article 4 Reg.15-64 (B)(1)(2)]

It is important to remember that it is also the responsibility of the licensee to report any changes that may occur to the commissioner. A licensee must report to the commissioner a change of address of the principal place of business or a branch office at least seven days before the change. Change of address notification of a licensed location must be accompanied by a fee of $25.00. A mortgage lender licensed pursuant to Chapter 22 must display in plain view in its principal office and in each branch the license issued by the commissioner. A loan originator licensed pursuant to Chapter 22 must display in each branch office in which mortgage loans are originated a copy of the license issued by the commissioner. [37-22-180(A)(B)]

Important to note is the fact that included in the notification, should be a plan of withdrawal with timetables for the disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records after that. [§37-22-210(G)].

So far what we have discussed has had to do with requirements for a person to obtain a mortgage license as well as what a licensee must do in order to maintain their license once they have obtained one.

Let us now move on to determining what may prevent an applicant from obtaining a license or what may force someone who already has a license to either lose or suspend his or her license.

Grounds for Denying a License

Aside from having the power to issue a license, the commissioner of the South Carolina State Board of Financial Institutions also has the power to deny, suspend, revoke, or refuse to issue or renew a license. We will now discuss the powers the commissioner has in South Carolina regarding the denial, suspension, revocation, or refusal to issue a license. As you will see, the commissioner can do various different things to licensees if he or she deems it necessary.

The commissioner may deny, suspend, revoke or refuse to issue a license if he or she finds that both: [§37-22-200(A)(1)(2)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]

- The order is in the public interest; and
- The applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee:
    - Has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;
    - Has violated or failed to comply with a provision of this chapter or order of the commissioner;
    - Within the past ten years has been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related business or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.

- A permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practice involving financial services or financial services related business;
    - Is the subject of an order of the commissioner denying, suspending, or revoking that person's license;
    - Is subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
    - Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements, pursuant to Chapter 22
    - Has been the executive officer or controlling shareholder or owned a controlling interest in a financial service or financial services related business that has been subject to an order or injunction described above
    - Has failed to pay the proper filling or renewal fee pursuant to Chapter 22 or a fine, penalty, or fee imposed by any governmental entity. However, the commissioner may enter only a denial order, and the commissioner shall vacate the order when the deficiency is corrected; or
    - Has falsely certified attendance or completion of hours at an approved education course.
- Furthermore, the commissioner may postpone or suspend the license of a licensee pending final determination of a proceeding. Once the commissioner enters the order to postpone or suspend a license, he or she must notify the applicant or licensee promptly that the order has been entered and provide the licensee an explanation as to why it was entered in the first place. The commissioner must also explain in the notice the procedure for requesting a hearing before the Administrative Law Court. If both the licensee does not request a hearing and if the commissioner does not request a hearing, the order remains in effect until it is modified or vacated by the commissioner. [§37-22-200(B)]
- The commissioner may also impose an administrative penalty on a licensee, or any member, partner, officer, director, or other person occupying similar status or performing similar functions on behalf of a licensee for violation of Chapter 22. The administrative penalty, whether for the licensee or any other person, cannot exceed $10,000.00 for each violation of the chapter by a licensee. [§37-22-200(C)]
- Additionally, the commissioner can order a person to cease from a prohibited action. If the person who has been ordered to cease from the prohibited action fails to request a contested case hearing, or if the person requests a hearing and it is denied or dismissed and the person continues to engage in the action, the person is subject to an administrative penalty that cannot exceed $20,000.00 for each violation of the commissioner's order. [§37-22-200(D)]

If a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the commissioner, may surrender his or her license and the rights and privileges that come with it and is no longer eligible to receive, or submit an application for, licensure for a period of time established by the commissioner. [§37-22-200(F)]

If the commissioner believes that the licensee or another person has violated Chapter 22 or that facts exist that would be the basis for an order against a licensee or other person, the commissioner can investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. In other words, if a licensee seems to have violated a provision in this chapter, the commissioner has the right to do what he or she must do in order to uncover evidence of the violation. Whatever the cost may be for investigating or examining, as long as it is "reasonable," will be charged to the licensee. The commissioner may also require the licensee or other person to submit a national and state fingerprint-based criminal record check and a set of fingerprints in connection to the investigation or examination. If the licensee or other person refuses to do so, they will be subject to disciplinary action. [§37-22-200(G)]

The commissioner may also subpoena documents and witnesses and compel their production and attendance, to examine under oath all persons whose testimony the commissioner considers relative to the person's business and require the production of books, papers, or other materials. At the licensee's expense, the commissioner may also conduct routine examinations of the books and records of a licensee to determine their compliance to Chapter 22. The commissioner can cooperate and share information with an agency of this State, or other states, or with the federal government concerning behavior that is regulated by Chapter 22. He or she can also participate in examinations with these agencies. [§37-22-200(G)(H)(I)(J)]

If the commissioner finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in an activity that results in the entry of an order suspending or withdrawing the license of a licensee, the commissioner can prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for a time of his choosing. The commissioner can also require a person to pay to a borrower or other natural person amounts received by the person or its employees in violation of Chapter 22. [§37-22-200(K)(L)]

As reviewed, the commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions has a lot of discretion with regards to licensing. However, one should note that this does not mean that he or she is not held accountable. The commissioner must still report information to the Board as well as the Nationwide Mortgage Licensing System and Registry. In fact, any order issued by the commissioner regarding Chapter 22, must be reported to the Nationwide Mortgage Licensing System and Registry. [§37-22-200(M)].

It is important to state that if any of the provisions we have mentioned thus far are violated, state law imposes disciplinary action on the violator. A person who violates any of the provisions we have discussed and found in Chapter 22 of Title 37 of the South Caroline Code of Law, is guilty of a misdemeanor and, upon conviction, must be fined not more than $500.00 or imprisoned not more than 6 months, or both, for each violation. Each transaction involving the unlawful making or servicing of a mortgage loan is a separate offense. [§37-22-230]

Conclusion

After reviewing this lesson, you should now be familiar with what the law requires you to do if you would like to apply to become a mortgage loan originator as well as what is required of you once you have obtained your license.

LESSON SUMMARY

Important definitions:

"loan originator"- a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition "loan originator" does not include an exempt person or a person solely involved in extensions of credit relating to timeshare plans.

"act as mortgage broker"- for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

(i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,

(ii) engaging in table funding of a mortgage loan, or

(iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

"Act as a mortgage broker" also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service.

"licensee"- someone who is licensed pursuant to Chapter 22

"Day"- all calendar days including Saturdays, Sundays, and legal public holidays

"Employee"- a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

"Notice"- written notification received by the Commissioner within (7) days of any change

"Prior Written Consent"- written consent given by the Commissioner authorizing a change of control prior to that change of control taking place. To request authorization from the Commissioner, all information regarding acquisition via stock purchase or other device must be sent to the Commissioner at least 30 days prior to the change of control.

Persons Required to be Licensed

Activities that require a license:

- Act as a mortgage lender or, directly or indirectly engage in the business of a mortgage lender under any name or title
- Circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of Chapter 22
- Employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to Chapter 22
- Continue to conduct activities of a licensee if you are not employed by a mortgage lender that is licensed pursuant to Chapter 22

A loan originator cannot be employed by more than one mortgage lender.

The only persons that can be exempt of having a license are those deemed as "exempt persons."

License Qualifications and Application Process

Information necessary for an application for licensure:

- name, address, and social security number or, if applicant, Employer Identification Number (EIN);
- form and place of organization, if applicable;
- proposed method of and locations for doing business, if applicable;
- qualification and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:
  - a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;
  - a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and
  - a conviction of, or plea of guilty or nolo contendere to a felony;
- financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and
- consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner.

To obtain a license as a mortgage loan originator a person must:

- have attained the age of at least 18 years;
- work for licensed mortgage lender;
- have satisfactorily completed pre-licensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content;
  - an applicant must pass the national test
  - if the applicant fails the test the applicant can retake the test as follows
    - After initial fail, applicant must wait 30 days before retaking the exam
    - After second attempt, applicant must wait 30 days before retaking the exam
    - After third attempt, the applicant must wait 180 days prior to retaking the exam

- have never had a loan originator license revoked in any governmental jurisdiction; and
- have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application of licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

To obtain a license as a mortgage lender:

- If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.
- If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described above
- If the applicant is a corporation, at least one of its principal officers shall have the experience described above
- If the applicant is a limited liability company, at least one of its members or managers shall have the experience described above

  Instead of showing three years experience, an applicant may show proof of three years employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

Fees for application:

- If the application is for licensure as a mortgage lender, the filing fee is set at $1,000.00
- If the application is for a mortgage loan originator, the filing fee is $50.00
- if a loan originator changes employment a new license must be issued for a fee of $25.00

Surety bonds:

A mortgage lender must post and maintain a surety bond in the amount determined by the commissioner of the South Carolina State Board of Financial Institutions. The amount is based on the total dollar amount of a mortgage loan subject to regulation by the commissioner in a calendar year pursuant to the following:

- Dollar volume of mortgage loans from $0-$49,999,999, surety bond of $50,000
- Dollar volume of mortgage loans from $50,000,000 to $249,999,999, surety bond of $100,000
- Dollar volume of mortgage loans greater than $250,000,000 surety bond of $150,000

According to state law the surety bond of a mortgage lender can never be less than $50,000.

The full amount of the surety bond must be in effect at all times.

It is important to remember that the law requires licenses to be issued for the principal office as well as each branch office.

If necessary, the commissioner can also issue a license to a loan originator's home as a branch office if it is more than 70 miles from a commercial branch office.

If a mortgage lender acts as a mortgage broker, he or she does not need a license. However, if the mortgage lender acts as a mortgage broker for the majority of his or her mortgage loans, then he or she requires a license as a mortgage broker.

When submitting an application, if any information is inaccurate or incomplete, you must file a correcting amendment with the commissioner.

License Maintenance

All licenses expire annually and must be renewed.

The renewal period for licensees is from November 1st through December 31st.

If you do not renew within the renewal period, you are subject to a late fee.

Licenses can be renewed by paying to the commissioner a renewal fee as prescribed by the Board for each of the following:

- For a licensed mortgage lender, an annual renewal fee of no more than $800 and no more than $150 for each branch office
- For a licensed loan originator, the renewal fee is no more than $50.00

If a license for a licensed mortgage lender is not renewed by the renewal date, a late fee of no more than $500 as prescribed to the Board must be assessed.

If a license for a licensed mortgage loan originator is not renewed during the renewal period, a late fee of no more that $100 as prescribed by the Board must be assessed as a late fee.

If the licensee fails to renew his or her license within 30 days after the date the license expires or fails to maintain a valid license, the commissioner will require that the licensee comply with the requirements denoted by law for obtaining an initial license as well as pay the fee that has accrued.

To renew a license a licensee also has to:

- Complete at least 8 hours of continuing professional education every year
    - Continuing education must include at least 1 hour of South Carolina Laws and Regulations
    - The completion of the continuing professional education must be reported to the commissioner every year
    - Licensees must maintain documentation of all courses completed
    - Documentation of the courses completed is subject to inspection by the commissioner for up to two years after the date of course completion
- Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.
- If a licensee fails to complete the continuing professional education before the license expiration date, his or her license expires and he or she will have to pay a penalty of no more than $100.00 in addition to other fees that may have accrued.
- All pre-licensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry before credit can be given to applicants or licensees. Applicants and licensees that successfully complete education or testing approved through the NMLS fulfill requirements of this State.
- Licensees must also preserve for 3 years records containing accounts, correspondence, memoranda, papers, books, etcetera regarding their everyday mortgage loan originating activities.

Licensees must also keep and submit a Mortgage Log on March 31st of every year containing the following:

- Credit score of borrower
- Adjustable or fixed type of loan
- Term of loan
- Annual percentage rate of the loan
- Appraised value of the collateral

For everyday this log is late or incomplete, the licensee is responsible for paying an $100.00 fee.

The log must be completed electronically and include all loans and applications where credit is requested.

Any information contained in documents submitted to the commissioner that is inaccurate must be corrected with the submission of a correcting amendment within 120 days of initial submission to the commissioner.

Licensees, whether mortgage lenders or loan originators must always display their NMLS unique identifier on all loan applications as well as all advertisements.

Any changes in addresses must be reported to the commissioner in at least 7 days from the change.

Grounds for Denying a License

The law gives the commissioner of the South Carolina State Board of Financial Institutions a lot of discretion when it comes to determining who can be licensed. If the commissioner believes that the applicant should not be licensed, for any reason, then that applicant will not be licensed.

The commissioner may deny, suspend, revoke, or refuse to issue a license if he or she finds that both:

- The order is in the public interest; and
- The applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee:
    - Has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;
    - Has violated or failed to comply with a provision of this chapter or order of the commissioner;
    - Within the past ten years has been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related business or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.
    - A permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practice involving financial services or financial services related business;
    - Is the subject of an order of the commissioner denying, suspending, or revoking that person's license;
    - Is subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
    - Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements
    - Has been the executive officer or controlling shareholder or owned a controlling interest in a financial service or financial services related business that has been subject to an order or injunction described above
    - Has failed to pay the proper filling or renewal fee or a fine, penalty, or fee imposed by any governmental entity. However, the commissioner may enter only a denial order, and the commissioner shall vacate the order when the deficiency is corrected; or
    - Has falsely certified attendance or completion of hours at an approved education course.

The commissioner can also:

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred
- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions of Chapter 22

The commissioner must report information to the Board and any order issued by the commissioner to the Nationwide Mortgage Licensing System and Registry.

Disciplinary action is imposed by state law to any licensee that violates any of the provisions in Chapter 22.

- violators are guilty of a misdemeanor
- can be fined up to $500.00 or imprisoned for up to 6 months or both for each violation

South Carolina State Content - Part 3

Compliance and Disciplinary Action

OVERVIEW

In this lesson we will review South Carolina law as it pertains to licensee behavior. We will go over what the law denotes as prohibited conduct and practices as well as what the law states is required conduct for licensees. We will also review fees and charges associated with being a licensee and the disclosures and agreements licensees will come across in their daily originating activities. Furthermore, we will go over how to advertise in the mortgage lending industry in accordance to state law. Lastly, we will discuss what South Carolina law states about disciplinary action, including notifications, hearings, and appeals; the suspension, revocation and rescissions of licenses; penalties and fines; and civil and criminal liability.

Learning Objectives

After reviewing this lesson, students should be able to:

- Recognize prohibited conduct and practices for licensees
- Know the different disclosures and agreements licensees encounter in their activities as mortgage loan originators
- Know how what is required of licensees if they want to advertise for business
- Understand what state law states disciplinary action should be for licensees that violate state provisions

Compliance

As mentioned previously, there are two main titles and chapters in the South Carolina Code of Laws that pertain to mortgage lending and licensing: Title 37, Chapter 22, and Title 40, Chapter 58. What we will be predominantly reviewing below is what the law denotes in Title 37, Chapter 22, which is the Mortgage Lending Act. However, we will also be covering some of the provisions in Title 40, Chapter 58, or the Licensing of Mortgage Brokers Act. Title 40, Chapter 58 contains provisions that are almost identical to those provisions in Title 37, Chapter 22.

Their main difference, however, is the fact that Chapter 22 places regulatory authority on the Commissioner of the Consumer Finance Division of the State Board of Financial Institutions and Chapter 58 places regulatory authority on the Administrator of the Department of Consumer Affairs. As you will recall, from a previous section, both of these offices are South Carolina's regulatory authority for matters relating to mortgage lending services in the state. The South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators, while the Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and mortgage broker loan originators.

Prohibited Conduct and Practices; Required Conduct

So far, we have focused on what one must do in order to apply for a mortgage lending license or mortgage loan originator license in the state of South Carolina as well as what one must do in order to maintain a license once it has been obtained.

We will now turn to what the law provides regarding conduct and behavior for those who have obtained a license.

Below we will review what the law states are prohibited practices and conduct of a person that is licensed as a mortgage loan originator.

Title 37, Chapter 22 states that the following are prohibited activities that are a violation of state and federal law. [§37-22-90(A)(1)(2)(3)(4)(5)(6)(7)(8)(9)(a)(b)(10)(a)(b)(c)(11)(12)(13)(14)(15)(16)(17)(B)]

(Section 40-58-70 also lists prohibited activities, most of which match those below):

- In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person licensed pursuant to Chapter 22, in the course of a mortgage loan origination, to:
    - Misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;
    - To refuse improperly or fail to issue a satisfaction of a mortgage pursuant to Section 29-3-310;
    - Fail to account for or deliver to a person entitled to receive funds, documents, or other things of value obtained in connection with a mortgage loan including money provided by a borrower for a real estate appraisal or credit report, which the mortgage lender or loan originator is not entitled to retain under the circumstances;
    - Pay, receive or collect in whole or in part any commission, fee, or other compensation for a mortgage loan origination in violation of this chapter including any unlicensed person other than an exempt person;
    - Charge or collect a fee or rate of interest or to make or service a mortgage loan with terms or conditions or in a manner contrary to the provisions of this chapter
    - Advertise mortgage loans including rates, margins, discounts, points, fees, commissions, or other material information including material limitations on the loans, unless the person is able to make the mortgage loans available as advertised to qualified applicants;
    - Fail to disburse funds in good faith and in accordance with a written commitment or agreement to make a mortgage loan that has been accepted by the borrower;
    - Engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person;
    - Fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:
        - Requested from the third party in writing by the mortgage lender or an employee of the mortgage lender; and
        - Performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender
    - Influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. This item does not prohibit a mortgage lender or servicer from asking the appraiser to do one or more of the following:
        - Consider additional appropriate property information
        - Provide further detail, substantiation, or explaining for the appraiser's value conclusion; or
        - Correct errors in the appraisal report;
    - Fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act and regulations adopted pursuant to them and the state law;
    - Fail to provide within a reasonable time, upon written request of a borrower, a payment history statement in a form easily understood by the borrower including payment dates and amounts and charges within the twelve months preceding the month which the request is received and the total amount unpaid as of the end of the period covered by the statement;
    - Take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than five thousand dollars;
    - Fail to provide disclosures as required by the state or federal law or collect any fee before providing required disclosures;
    - Fail to comply with Chapter 22 or other state or federal law including rules and regulations applicable to business regulated by this chapter;
    - Falsely advertise or misuse names in violation of 18 U.S.C. Section 709
      (False advertising or misuse of names to indicate Federal Agency) or state law; or

    - Use any trade name or insignia of membership in an organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, business card, stationery, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.
    - Charge fees for services rendered as a mortgage broker without disclosing these fees to the applicant as required by federal and state law [§40-58-75(C)].
- A violation of state or federal law applicable to a business covered by Chapter 22 is a violation of this chapter and may be enforced by the commissioner.

As you can see, there are various different ways a licensee's conduct and behavior can violate the law.

It is important to note that licensees should behave ethically and in accordance to the law in order to maintain their license in good standing.

If a licensee is involved in any of the mentioned prohibited actions, it means that the licensee is not behaving ethically and is breaking the law.

By doing so, the licensee is subject to disciplinary action, which we will discuss later in this lesson.

Fees and Charges

When working as a mortgage lender or mortgage loan originator, you will have clients that will be making one of the biggest financial decisions and commitments of their lives.

Though this commitment is one of the biggest, the majority of consumers know very little about the transaction itself. Part of the large commitment includes different fees and charges that lenders add to the transaction costs aside from the cost of the property. Consumers are not necessarily knowledgeable about these specific costs.

Due to the lack of knowledge on behalf of the consumer, state law has created provisions regarding disclosures about these fees and charges in the hopes of protecting the consumer. We will review these provisions now.

Section 75 of Chapter 58, Title 40, also known as the Licensing and Mortgage Brokers Act, deals with mortgage broker fees and agreement disclosing charges.

The law states that within three business days of receiving an application for a mortgage loan, the broker must provide a mortgage broker fee agreement. The mortgage broker fee agreement discloses the estimated charges to the borrower for the mortgage loan and itemizes the charges provided if required under, federal or state law. This particular disclosure is considered delivered when deposited with the United States Postal Service for first class delivery. [§40-58-75(A)]

The law also makes it clear that a person may not earn, charge, or collect a mortgage broker or processing fee unless the person meets the requirements of Chapter 40, is authorized to conduct mortgage brokerage services by this chapter, or is exempt from the requirements of this chapter. [§40-58-75(B)]

Whatever fees might be charged must be made known to the borrower ahead of time. In other words, all fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker as is required by federal or state law. [§40-58-75(C)]

As mentioned above, the mandatory mortgage broker fee agreement must be in writing and given to the borrower within 3 days of the borrower's application.

The mortgage broker fee agreement must include the following information:

- Current name
- Address
- Telephone number of the mortgage broker's branch office
- Account number, if any
- Date of agreement
- Name of the borrower or proposed borrower
- Signature of borrower and mortgage broker
- Amount of any fees
- Nature of services provided to the borrower

A copy of the completed mortgage broker fee agreement must be given to the borrower and this disclosure must be signed by the borrower acknowledging that he or she received the document. If the loan could be co-brokered, the agreement must have a statement saying so. If that is the case, the mortgage broker must provide written notice of co-brokering within three days of making the final decision to co-broker. The notice must include the name and street and mailing address of the co-broker as well as which broker should be contacted regarding the progress of the services provided. Each co-broker must be licensed with the administrator. [§40-58-75 (D)]

There are also other fee and charges disclosures that are mandated and regulated by state law aside from the mortgage broker fee agreement.

Section 102 of Chapter 10, Title 37 deals with fees and other charges on mortgage loans for personal, family or household purposes. This section of the law states that whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for personal, family or household purpose:

- The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction.
    - The creditor may require the attorney or agent to provide mortgage title insurance
    - Any legal fees other than for examination and certification of the title, the preparation of all required documents, and the closing of the transaction required or incurred by the creditor in connection with the transaction is the responsibility of the creditor, regardless of who pays for the title work, document preparation, and closing
    - The creditor may contract and receive the following additional charges in a transaction:
        - The charge of any credit report
        - A nonrefundable assumption fee in an amount not exceeding the lesser of $400.00 or 1% of the unpaid balance of the loan
        - Section 202 of Chapter 3 of Title 37 authorizes the following charges: [37-3-202(1)(a)(b)(c)(i)(ii)(d)(i)(ii)(iii)(iv)(v)(e)(f)(2)(a)(b)]
            - Loan finance charge
            - Official fees and taxes
            - Charges for insurance
            - Closing costs
                - Fees or premiums for title examinations, abstract of title, title insurance, surveys, or similar purposes
                - Fess for preparation of deed, settlement statement, or other documents
                - Escrows for future payments of taxes, insurance, water, sewer, land rents, assessments for improvements
                - Fees for notarizing deeds and other documents
                - Fees for appraising real estate that is collateral for the loan
                - Charges for other benefits conferred to the debtor
                - Fees and charges paid to persons registered as mortgage loan brokers pursuant to Chapter 58, Title 40
                - Insurance against loss or damage to property, or against liability
                - Insurance written in connection to the loan

The above provisions enable mortgage loan originators and mortgage lenders to collect the various different charges and fees relating to the closing of a mortgage loan transaction aside from the cost of the property. There are many moving parts in closing a mortgage loan. These provisions help protect the consumer from being charged additional fees that should not be included in the closing process. These provisions also help make the process simpler as all money relating to the closing can be collected at once and distributed by one person.

Charges and fees are not the only matters in a mortgage loan transaction that federal and state law includes in its provisions.

Providing proper disclosures regarding all fees and the mortgage loan itself during a mortgage loan transaction is also mandated by federal and state law. We will turn to these next.

Disclosures and Agreements

Federal law requires mortgage loan originators provide many different disclosures to consumers. State law also specifies certain disclosures, some of which we have already discussed, that must be provided to consumers during a mortgage loan transaction.

Section 78 of Chapter 58, Title 40 denotes the requirements for certain disclosures.

The mortgage broker fee agreement, which as discussed earlier, must be provided to the borrower three days after their application is submitted, must contain the following statements: [§40-58-78(A)(1)(2)(3)(4)]

- The mortgage broker or loan originator is acting as the agent of the borrower in providing brokerage services to the borrower;
- When acting as agent of the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of the person;
- A detailed description of the services the mortgage broker or loan originator agrees to perform for the borrower, and a good faith estimate of any fees the mortgage broker or loan originator will receive for those services, whether paid by the borrower, the institutional lender, or both; and
- A clear and conspicuous statement of the conditions under which the borrower is obligated to pay for the services rendered under the agreement.

Additionally, at the time of application for a mortgage loan, the mortgage broker or originator or employee must provide the borrower with a document that specifies the agency designated to receive complaints or inquiries about the origination and making of the loan.

The document should include the telephone number and address of the agency. The consumer must sign a copy of the document acknowledging receipt of the disclosure and the copy must be maintained in the files of the mortgage broker or originator.
[§37-23-70] This particular disclosure protects the consumer by making him or her aware of the fact that they do have a way of reporting any wrongdoing during the transaction.

The law also demands that at the time the borrower receives the Loan Estimate and before the scheduled closing of the loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs provides a disclosure form that, as required by state law, includes the following: [§37-23-75(A)(1)(2)(3)(4)(B)]

- The dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount
- An itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;
- A dollar amount total of these two items and a percentage of the total specified in relation to the total amount of the loan; and
- For an adjustable rate mortgage, a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.
- The form must include a signature line for the borrower to acknowledge that they have received these disclosures and that they have been explained and he or she understands them and wants to enter into the loan transaction voluntarily.

Together with the disclosures mandated by federal law, the above are state specific disclosures that must be provided to the borrower when involved in a mortgage loan transaction. If any of these disclosures are not provided to the borrower, the licensee will be subject to disciplinary action.

Advertising

Aside from licensee conduct during a mortgage loan transaction, state law also provides regulation on how a licensee should behave when conducting other activities. Licensees may want to advertise in order to obtain more business. Federal law has a lot to say about what is the correct way to advertise as a licensed mortgage loan originator. State law also has stipulations regarding advertisements.

First, advertising, for the sake of state law, is defined in the definitions portion of Chapter 22, Title 37. The law states that advertising is a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction. [§37-22-110(4)]

Without first obtaining a license, a person may not circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activities reserved for mortgage loan originators. [§37-22-120(A)(2)].

Thus, unless you are a licensee, you cannot advertise for anything relating to activities that require a license. If you were to advertise without a license, this behavior could be deemed fraudulent, and therefore illegal.

With the above in mind, it is no surprise that state law also states that a person engaging solely in loan processor or underwriter activities may 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 person may or will perform any of the activities of a loan originator. [§37-22-110(35)(b)]. Again, you have to be licensed in order to advertise mortgage loan origination activities and both underwriters and loan processors are not licensed as mortgage brokers or loan originators.

State law also expresses that if you are a licensee licensed through the Nationwide Mortgage Licensing System and Registry, the law requires you to use your unique identifier assigned by the Nationwide Mortgage Licensing System & Registry in all advertising and on all mortgage loan documents [§37-22-270 (D)]. Thus, whenever promoting yourself or your business as it relates to mortgage lending activities and whenever working with a client on a mortgage loan, you must include your unique identifier as proof of your licensure and as a mode of accountability.

For all other advertising provisions, Chapter 3, Title 22 specifies compliance with the Federal Truth in Lending Act [§37-3-301].

So far, we have discussed what state law mentions regarding proper conduct for licensees in the state of South Carolina.

We will now turn to what state law depicts is proper disciplinary action for licensees who violate the provisions in state law we have gone over.

Disciplinary Action

Notifications, Hearings, and Appeals

As we have reviewed before, the commissioner and administrator has a lot of authority when it comes to licensing in South Carolina. They also have a lot of discretion when it comes to imposing disciplinary action on those accused of violating state provisions.

However, the law does also specify ways in which a licensee accused of violating state provisions can defend himself or herself in a situation where the commissioner or administrator has requested an administrative order against the licensee. Of this, the laws say the following:

> A person aggrieved by an administrative order issued by the commissioner may request a contested case hearing before the Administrative Law Court in accordance with the court's rules and procedures. According to state law, a contested case is defined as a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency or Administrative Law Court after an opportunity hearing [§1-23-505(3)].
>
> The Administrative Law Court, which was established by Chapter 23, Title 1 of the South Carolina Code of Law, is an agency and a court of record within the executive branch of the government of South Carolina. It consists of 6 administrative law judges. [§1-23-500] If the person aggrieved by the administrative order issued fails to request a contested case hearing, within the time provided in the court's rules of procedure, the administrative order becomes final and the commissioner may ring action to enforce its order pursuant to Chapter 23, Title 1. [§37-22-130(A), §40-58-90(A)]

Contested case proceedings are instituted by filling a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be saved upon the commissioner and all parties of record.

The final decision of the administrative law judge may be appealed as provided in Section 1-23-380, Section 1-23-610, or Chapter 23, Title 1. [§37-22-130(B), §40-58-90(B)]

Please note that all actions and hearings pursuant to Chapter 22. Title 37 are governed by Chapter 23, Title 1. [§37-22-200(E)] Chapter 23, Title 1 includes specific provisions on state agency rule making and the adjudication of contested cases in South Carolina.

The law provides with the above the tools necessary for a licensee to defend him or herself against action taken on him or her by the commissioner or administrator. Let's discuss some of the possible actions that can be taken against licensees.

Suspension, Revocation, and Rescission of Licenses

As we discussed in the last section on applying for, obtaining, and maintaining a license, the commissioner or administrator has full discretion to determine whether an applicant or licensee should obtain a license or have his or her license suspended, denied, or revoked.

The commissioner, by order, may deny suspend, revoke, or refuse to issue or renew a license of a licensee or applicant or may restrict or limit the activities relating to mortgage loans of a licensee or person who owns an interest in or participated in the business of the licensee, if the commissioner finds that both the order is in the public interest; and: [§37-22-200(A)(1)(a-j)]

- The applicant or licensee has filed an application for license that contained a statement that is false or misleading with respect to a material fact;
- Has violated or failed to comply with a provision in Chapter 22 or order of the commissioner;
- Within the past 10 years been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related to business or an offense involving a breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court;
- Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practices involving financial services or financial services related business;
- Is subject of an order of the commissioner denying, suspending, or revoking that person's license;
- Is the subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
- Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements;
- Has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business that has been subject to an order or injunction;
- Has failed to pay the proper filling fee or renewal fee or fine, penalty or fee imposed by any government entity. (However, if this is the case, the commissioner may only enter a denial order and the commissioner will vacate the order once the deficiency has been corrected);
- Has falsely certified his or her attendance or completion of the hours of an approved education course.

The commissioner can also: [§37-22-200(B)(C)(D)(E)(F)(G)(H)(I)(J)(K)(L)]

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred

- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions of Chapter 22

It is important to note that when a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee with the consent and approval of the commissioner or administrator, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the administrator or commissioner.
[§40-58-80(F)]

As you can see, there are various ways in which the commissioner or administrator can punish a licensee for his or her behavior. The above is disciplinary action that the commissioner or administrator can impose against a licensee for having violated the provisions included in the South Carolina Code of Law.

State law also includes other disciplinary action provisions that are more specific with regards to the type of licensee behavior. We will turn to these next.

Penalties/Fines

What happens if a licensee does not disclose a charge or fee during a mortgage loan transaction? If a mortgage broker or loan originator violates the provisions regarding disclosures, charges and fees, the borrower can recover from the mortgage broker or loan originator charged with the violation: [§40-58-78(B)(1)(2)(3)]

- A penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction;
- Fees paid by the borrower to the mortgage broker or loan originator for services rendered by the agreement; and
- Actual costs, including attorney's fees, for enforcing the borrower's rights under the agreements.

However, if the mortgage broker or loan originator can show evidence that the violation he is accused of was not intentional and resulted from a bona fide error, he or she will not be held liable. [§40-58-78(C)]. In other words, if the mortgage loan originator can show with evidence that he or she unintentionally forgot to provide the borrower with a particular disclosure regarding fees or charges, he or she will not be charged with disciplinary action.

That said, if a loan originator is found to have intentionally disregarded the law, whether by ignoring a disclosure or any other provision included in the Mortgage Lending Act, he or she will be subject to disciplinary action. The law states that a person that is found to willfully violate the provisions in Chapter 22, Title 37 will be considered guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each violation. Each transaction involving unlawful making or servicing of a mortgage loan is a separate offence. [§37-22-230].

With regards to the enforceability of an agreement or transaction, Chapter 5, Title 37 explains that if a transaction or an agreement is found to have been made unconscionably at the time it was made, the court may refuse to enforce the agreement or transaction. [§37-5-108]

Additionally, if the court believes a person is engaging or is likely to engage in unconscionable conduct in collecting a debt arising from the transaction, the court can grant an injunction and a consumer can recover actual damages from the person violating the law. [§37-5-108]. Thus, if the person found violating the law is a licensee, then the court can find that the licensee owes the consumer actual damages.

Chapter 5 also refers to what the lender can do in the case of consumer default. The law states the following:

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable to the extent that: [§37-5-109, §37-5-110]

- The consumer fails to make a payment as required by agreement
- The prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

After a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer a notice. The notice is considered delivered when the creditor delivers it to the consumer or mails it to the consumer's residence. The notice must be in writing state the following:

- Name, address and telephone number of creditor whom payment is to be made
- Brief identification of the credit transaction
- Consumer's right to cure the default
- Amount of payment
- Date by which payment must be made to cure default

The chapter provides an example of what this notice should say:

"(name, address and telephone number of creditor), (account number, if any),
(brief identification of credit transaction)

____________________________________(date is the LAST DAY FOR PAYMENT

____________________________________(amount) is the AMOUNT NOW DUE

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due us on the credit transaction in question. If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly."

After the notice of the consumer's right to cure is delivered, the creditor cannot proceed enforcing a security interest in goods that are collateral until 20 days after the delivery of the notice. It is important to note that cure restores the consumer to his rights under the agreement as though the defaults did not occur. [§37-5-111]

With regards to the location where an action is brought, chapter 5 denotes that if the action is brought to enforce an interest in land securing the consumer's obligation, the action can be brought in the county in which the land or a part thereof is located. If the current residency of the consumer is not in South Carolina, the action can be brought to the county where the loan or sale was made. [§37-5-113]

With regards to action brought by a creditor against a consumer, the complaint must allege the facts of the consumer's default, the amount the creditor is owed, and how that amount was determined, and whether the notice of cure has been delivered or is not required. A default judgment will only be entered into action if the default has been verified by the creditor or a sworn testimony, by affidavit or otherwise, showing that the creditor is entitled to the relief demand.
[§37-5-114]

These provisions enable the creditor to take legal recourse for a fault on the part of the consumer. Let's go back to reviewing provisions that enable a consumer to take legal recourse against a licensee. We will now review what state law says of the civil and criminal liability of a licensee.

Civil and Criminal Liability

Civil Penalties:

For the purposes of the following provisions we will review, the term creditor means:

> *A person who in the ordinary course of business regularly extends or arranges for the extension of credit or offers to arrange for the extension of credit. [§37-5-203(6)]*

A creditor who, in violation of the provisions of the Federal Truth in Lending Act or Section 37-2-309 or 37-3-308, fails to disclose information to a person entitled to information regarding a mortgage, is liable to that person in an amount equal to the sum of:
[§37-5-203(1)(a)(b)]

- Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this item must be not less than $100.00 or more than $1000.00; and
- In the case of a successful action to enforce the liability, the cost of the action together with reasonable attorney's fees as determined by the court.

With respect to disclosures mandated by the Federal Truth in Lending Act and state law regarding advertising, a creditor has no liability if within 60 days after discovering an error, and before the institution of an action or receipt of written notice of the error, the creditor notifies the person of the error and makes necessary adjustments in the appropriate account to assure that the person is not required to pay a finance charge in excess of the amount of percentage rate actually disclosed. [§37-5-203(2)]

As mentioned earlier, the law denotes that for any of the provisions violated, if the creditor can show with preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, he or she is not held liable. [§37-5-203(3)]

No action, as those described above can be brought more than 1 year after the occurrence of the violation. Additionally, the liability of the creditor with regards to the above provisions is meant to be in lieu of and not in addition to his or her liability under the Federal Truth in Lending Act. [§37-5-203(5)(8)].

Criminal Penalties:

A lender who willfully makes charges in excess of those permitted by law is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000.00, or to imprisonment not exceeding 1 year. [§37-5-301(1)]

A person, other than a supervised financial organization, who willfully engages in the business of making loans without a license where a license is required, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000, or imprisonment not exceeding 1 year, or both. [§37-5-301(2)]

A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $500.00, or to imprisonment not exceeding one year, or both, if he willfully and knowingly: [§37-5-302(1)(2)(3)]

- Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of the Federal Truth in Lending Act,
- Uses any rate table or chart, the use of which is authorized by the provisions of the Federal Truth in lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions; or
- Otherwise fails to comply with any requirement of the provisions on disclosure of the Federal Truth and Lending Act

The criminal liability of a person is in lieu of and not in addition to his criminal liability under the Federal Truth in Lending Act; no prosecution of a person with respect to the same violation may be maintained pursuant to both South Carolina law and the Federal Truth in Lending Act.

Conclusion

In this lesson we reviewed what state law specifically states is prohibited conduct and practice, proper conduct as well as what constitutes disciplinary action for those who obtain a license and violate state law provisions.

You should now have a better understanding of what is expected of a licensee, what licensees should not do, and what can happen if a licensee is accused or found guilty of violating state provisions.

LESSON SUMMARY

Prohibited Conduct and Practice

It is unlawful to:

- Misrepresent or conceal material facts
- Make false promises likely to influence, persuade, or induce an applicant for a loan
- Refuse improperly or fail to issue a satisfaction of a mortgage
- Fail to account for or deliver to a person entitled to receive funds, documents, or other things of value
- Pay, receive or collect in whole or in party any commission, fee, or other compensation for a mortgage loan origination in violation of state law
- Charge or collect a fee or rate of interest in violation of state law

- Advertise mortgage loans including rates, margins, discounts, points, fees, commissions, or other information that a person is not able to provide as advertised
- Fail to disburse funds in good faith and in accordance to a written agreement
- Engage in a transaction, practice, or course of business in connection to making a mortgage loan that is not in good faith or fair dealing, that is unconscionable, or constitutes fraud upon a person
- Fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:
  - Requested from the third party in writing by the mortgage lender or employee
  - Performed by a third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender
- Influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.
  - This provision does not prohibit asking the appraiser to consider additional appropriate property information; provide further detail, substantiation, or explaining for appraiser's value conclusion; or correcting errors on the appraisal report
- Fail to comply with mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by RESPA
- Fail to provide a payment history statement in a reasonable time and in a form easily understood by the borrower when he or she has written a request for one.
- Take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than $5,000
- Fail to provide disclosures as required by state and federal law or collect any fee prior to providing required disclosures.
- Fail to comply with state or federal law
- Falsely advertise or misuse names
- Use a trade name or insignia of membership to an organization that the licensee is not a member of
- Charge fees for services rendered as a mortgage broker without disclosing fees as required by law

Fees and Charges

Within 3 days of receiving an application, originator or broker must provide a mortgage broker fee agreement.

The mortgage broker fee agreement must disclose the estimated charges to the borrower for the mortgage loan and itemize the charges provided if required by law. The agreement must include:

- Current name
- Address
- Telephone number of broker's branch office
- Date of agreement
- Account number, if any
- Name of borrower or proposed borrower
- Signature of borrower
- Signature of mortgage broker
- Amount of any fees
- Nature of services provided to borrower

A copy of the mortgage broker agreement must be provided to the borrower.

If the loan is co-brokered, the mortgage broker agreement must say so.

The mortgage broker fee is considered as delivered once deposited with the US Postal Service for first class delivery.

All fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker.

Prior to a loan closing, the creditor must know the preference of the borrower for a legal counsel that is employed to represent him or her in all matters of the transaction relating to the closing of the transaction.

The creditor can require:

- Mortgage title insurance
- Legal fees other than for examination and certification of title, the preparation of documents, and the closing of the transaction are the responsibility of the creditor
- The creditor can receive other charges:
    - Charge for creditor report
    - Assumption fee
    - Loan finance charge
    - Official fees and taxes
    - Charges for insurance
    - Closing costs:
        - Title examination, abstract of title, title insurance, surveys, etc.
        - Preparation of deed, settlement statement, etc.
        - Escrows for future payments of taxes, insurance, water, sewer, land rents, etc.
        - Notarization of deeds and documents
        - Fees for appraisal
        - Fee for mortgage loan originator or broker
        - Insurance written in connection to loan

Disclosures and Agreements

The law mandates that mortgage broker fee agreement be given to the borrower. The agreement must include the following statements:

- The mortgage broker or loan originator is acting as the agent of the borrower providing brokerage services to the borrower
- When acting as the borrower’s agent, he or she owes him or her a duty of utmost care, honesty, and loyalty in the transaction
- A detailed description of services the mortgage broker or loan originator agrees to perform for the borrower and an estimate of fees
- A clear and conspicuous statement of the conditions under which the borrower must pay for the services rendered

The mortgage broker or loan originator must also provide to the borrower a document that specifies the agency designated to receive complaints or inquiries about the origination and making of the loan.

Between the time the borrower receives the Loan Estimate and before the scheduled closing, the mortgage loan officer must disclose in writing the amount earned on the loan. A disclosure that includes the following must be provided:

- The dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount
- An itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;
- A dollar amount total of these two items and a percentage of the total specified in relation to the total amount of the loan; and

- For an adjustable rate mortgage, a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.
- The form must also include a signature line for the borrower to acknowledge that they have received these disclosures and that they have been explained and he or she understands them and wants to enter into the loan transaction voluntarily.

Advertising

Advertising is defined as a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction.

To advertise, one must have a license!

A person engaging solely in loan processing or underwriter activities cannot advertise or represent themselves to the public as someone that can perform any activities of a loan originator. Again, you must have a license to do so!

Those licensed through the Nationwide Mortgage Licensing System and Registry must use their unique identifier on all advertising and mortgage loan documents.

For all other advertising rules, licensees must comply with the federal Truth and Lending Act.

Notifications, Hearings, and Appeals

A person aggrieved by an administrative order by issued by the commissioner or the administrator can request a contested case hearing before the Administrative Law Court. If the person does not request the contested case hearing, the administrative order becomes final.

The commissioner may deny, suspend, revoke, or refuse to issue or renew a license. The commissioner can also restrict or limit the activities of a licensee. He or she can do so because he or she finds that both the order is in the public interest and:

- The application contains false or misleading information
- Person violated or failed to comply with license law
- Within the past 10 years the person is convicted, pled guilty or nolo contendere to a felony or a misdemeanor involving financial services or some offence involving breach of trust or fraudulent or dishonest dealing, money laundering
- Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practices involving financial services
- Is subject of an order of the commissioner denying, suspending, or revoking their license
- Is subject of an order entered by the authority of a governmental entity with jurisdiction over financial services denying or revoking that person's license
- Does not meet qualifications and requirements for licensure
- Has been the executive officer or controlling shareholder or owned a controlling interest in a financial services business that has been subject to an order or injunction
- Has failed to pay the proper filing fee or renewal fee or fine, penalty or fee imposed by any government entity.

The commissioner may also:

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred

- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions in Chapter 22, Title 37

When a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, he or she can surrender his or her license and the rights and privileges that come with it.

Penalties/Fines

If a mortgage broker or loan originator violates a provision regarding disclosures, fees or charges, the borrower can recover from the broker or originator:

- a penalty in the amount determined by the court
- fees paid by the borrower to the broker or originator
- actual costs

If mortgage broker or mortgage loan originator can show evidence that his or her violation of the law was not intentional, he or she will not be held liable.

If a transaction or agreement is found to have been made unconscionably at the time it was made, the court may refuse to enforce the agreement or transaction.

If the court believes that someone is engaging to is likely to engage in unconscionable conduct in collecting a debt, the court can grant an injunction and the consumer can recover actual damages.

Default:

If a consumer is in default for more than ten days, a notice must be delivered to the consumer. The notice of the right to cure should include the following:

- Name, address and telephone number of creditor whom payment is to be made
- Brief identification of the credit transaction
- Consumer's right to cure the default
- Amount of payment
- Date by which payment must be made to cure default

A creditor must wait 20 days after delivery of the notice of right to cure before enforcing a security interest. Cure restores the consumer to his rights under the agreement as if no default occurred.

Action can be brought to enforce an interest in land securing an obligation in the county where the land is located.

Civil Penalties:

A person who extends credit is considered a creditor.

A creditor in violation of the Federal Truth in Lending Act or Title 37, fails to disclosure information to a person that is entitled to receive information regarding a mortgage loan is liable to that person in an amount equal to the sum of:

- Twice the amount of the finance charge (not less than $100, no more that $1000)
- In the case of a successful action to enforce liability, the cost of the action together with the reasonable attorney's fees.

For disclosures mandated by the Truth in Lending Act, a creditor has no liability for 60 days after discovering an error and before the institution of an action or receipt of written notice of the error if he or she makes the proper adjustments to make sure that the person is not required to pay a finance charge in excess of what was already disclosed.

Criminal Penalties:

A lender who willfully makes charges in excess of those permitted by law is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000, or to imprisonment of no more than 1 year.

A person who will fully engages in the business of making loans without a license is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000, or imprisonment not exceeding 1 year, or both.

A person guilty of a misdemeanor upon conviction may be sentenced to pay a fine of up to $500 or to imprisonment of up to 1 year if he willfully and knowingly

- Gives false information
- Uses any rate table or chart in a manner not consistent with the law
- Fails to comply with any requirements of law for proper disclosures.

The criminal liability of a person is in lieu of and not in addition to criminal liability under the Federal Truth in Lending Act.