

Mortgage Regulation

NEWS

Oregon Division of Finance & Corporate Securities

Spring 2007

Administrator's message

By David Tatman



David Tatman

Dear Mortgage Lending Licensee:

The mortgage industry experienced a fast-paced year in 2006. At the end of the year, Oregon had more than 3,500 licensed mortgage offices (that includes out-of-state licensees) and more than 12,900 registered loan originators.

When you're busy, we are too. Our division spent a lot of time communicating with you last year. We sponsored public forums, attended your annual conference, held several industry-focused advisory committee meetings, and received more than 18,000 calls from industry folks.

We also adopted new rules related to education and supervision of loan originators and hired a new contractor to provide your proctored examinations.

During the past year, many lenders mentioned that they want more regulatory updates and information about how to comply with Oregon's laws. We pledged to start this newsletter to keep the information exchange flowing. I hope we can distribute this newsletter at least semi-annually.

In this edition, we discuss expectations for business conduct when working with appraisers, licensing tips, and how to correctly report an annual percentage rate (APR). We also provide a list of licensees who have received enforcement orders from the division since January 2006.

You will also see an education update from the Mortgage Lending Education Board. If you were not already aware, the board is composed of dedicated volunteers who work hard to provide you with a wide array of classes that are approved for both entry-level and continuing education.

I hope this information is helpful to you. If you have suggestions about future content or wish to follow up on issues raised in the newsletter, please e-mail Berri Leslie, Mortgage Lending Program manager, at berri.leslie@state.or.us.

David Tatman

Administrator, Division of Finance & Corporate Securities

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Tips for a smoother license renewal

- Don't delay. Complete the renewal online as soon as you receive the renewal notice.
- Make sure ownership is equal to 100 percent.
- Remember to list your Oregon Agent for Service of Process.
- Check the Secretary of State Corporation Division to make sure that your business registry and assumed business name(s) are current.
- Do not adjust the amount billed even if the loan originator count no longer agrees with yours. You are assessed this amount 60 days in advance and not charged for loan originators added or removed during the license periods.
- Mail signed and dated financial statements less than six months old with a balance sheet and profit and loss statement. Include a written explanation if your company is operating at a loss.
- Save money. Renew your license for two years. Late renewals are renewed for one year.
- Save time. Use the online reporting licensing system at www.oregonimla.org. ■

Working smart with appraisers

Appraisers provide a valuable service to mortgage lenders, but you need to make sure you are playing by the rules when working with an appraiser. There are many laws and guidelines governing the industry. The Uniform Standards of Professional Appraisal Practice (USPAP) is the generally accepted standard for appraisals.

Here are some things you cannot ask of an appraiser:

- An appraisal to a value. An appraiser is not permitted to appraise to a value (i.e., sales price, estimated refinance value, reduced value for tax or divorce purposes). An estimated value is independent of these scenarios and is derived from comparable sales, cost factors, and possible income data, among other value factors.
- A "comp search" free of charge. Per USPAP, an appraiser must perform an appraisal, even though it may be a limited report. Comparable



searches to arrive at an estimated value or range of value are not permitted without completion of an appraisal report. Therefore, asking an appraiser for a "comp search" free of charge is unreasonable.

Make sure you pay for appraisals promptly. Nonpayment for appraisal fees incurred by the mortgage broker, mortgage banker, or loan originator could constitute a violation of ORS 59.930 and/or 59.971. Both sections of the law address unethical business practices with regard to dishonest and fraudulent behavior. ■

Prepaid finance charges: *What you need to disclose*



Disclosing prepaid finance charges is a topic that comes up often during mortgage lender

examinations and division-led class presentations. According to the federal Truth in Lending Act (TILA), consumers must be informed about the cost and fees associated with their loan, in particular, a mortgage loan.

What costs should be included in the finance charges? Here is how the TILA defines finance charges:

“The finance charge is the cost of consumer credit as a dollar amount. *It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.*”

Charges by third parties also are included in the finance charges. According to the TILA:

“The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

- (i) requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or
- (ii) retains a portion of the third-party charge, to the extent of the portion retained.”

Charges included in this definition for a mortgage loan transaction are:

- All items listed on the Good Faith Estimate (GFE) under section 800, with the exception of the appraisal and credit report. Appraisal and credit report fees are excluded provided that the associated charge(s) are bona fide and reasonable. Charges include loan origination, discount, lender inspection, tax-related service, mortgage broker, processing, underwriting, flood hazard, wire transfer, administrative, closing agent/settlement, prepaid interest, and mortgage insurance, monthly and financed portion (if applicable).
- Although not a finance charge, mortgage brokers are required to disclose the potential for other compensation, such as Yield Spread Premium and Service Release Premium, on the GFE. Brokers can reference this initial disclosure by a range, such as 0 percent to 2 percent. The range needs to be customary and reasonable to the business practice. For example, reporting 1 percent, yet routinely collecting 5 percent would be considered misrepresentation and could subject the licensee to fines and penalties.

In addition to informing borrowers of the above charges, mortgage lenders are responsible for ensuring the charges are properly presented on the HUD-1 Settlement Statement. So when reviewing the HUD-1 prior to closing, you need to ensure the appropriate charges are listed and reported consistent with the numbering system between the GFE and the HUD-1. ■

Education update

Loan originators registered after Jan. 17, 2007 are required to complete their entry-level education and proctored examination before they begin taking loan applications.

In an effort to continue to provide you with outstanding education options, the Mortgage Lending Education Board that approves mortgage education in the state of Oregon would like your suggestions of classes you would like to take. Please e-mail your suggestions to: questions@oregonmleb.com or visit the Board's Web site at: www.oregonmleb.com.

The division is also working with a new education contractor as of May 1, 2007. Although the Mortgage Lending Education Board will continue to provide you with approved courses, Applied Management Professionals (AMP) will be your new proctored testing provider. You can preview its services at <http://www.goamp.com>.



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Enforcement orders against Oregon mortgage lenders from 2006



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Premier Mortgage Inc.
Rystadt & Escobar
Sunset Mortgage Company
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Synergy Financial Management Corp.
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Chapter 59 — Securities Regulation; Mortgage Bankers and Brokers

59.930 Fraud and deceit with respect to mortgage banker or broker business. It is unlawful for any person, directly or indirectly, in connection with the conduct of a mortgage banker or mortgage broker business:

- (1) To employ any device, scheme or artifice to defraud;
- (2) Knowingly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (4) To make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document which is known to be false in any material respect or matter. [1993 c.508 §19]

59.971 Prohibited conduct for loan originators; effect of criminal conviction; rules. (1) A person employed by a mortgage banker or mortgage broker as a loan originator may not:

- (a) Engage in dishonest, fraudulent or illegal practices or conduct in any business or profession or engage in unfair or unethical practices or conduct in connection with the mortgage business.
 - (b) Willfully or repeatedly violate or fail to comply with a provision of ORS 59.840 to 59.980 or a rule or order of the Director of the Department of Consumer and Business Services.
 - (c) Fail to account to persons interested for all money or property received in connection with a mortgage loan.
 - (d) Fail to meet the training, education or continuing education requirements for loan originators.
- (2) A person may not be employed by a mortgage banker or mortgage broker as a loan originator as defined in ORS 59.840 or 59.970 if the person has been convicted of any crime or category of crime specified by the director by rule. [2001 c.952 §6; 2003 c.526 §6]