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JULY 2010

LITIGATION DEPARTMENT

ALERT

Pennsylvania Department of Banking Steps Up Enforcement Against Mortgage Originators

By Ely Goldin

The Pennsylvania Department of Banking has stepped up enforcement actions against mortgage originators who do not comply with the Mortgage Licensing Act, 7 Pa. C.S. § 6101, et seq. (the MLA). The MLA, which went into effect on November 5, 2008, significantly reformed the mortgage industry in Pennsylvania. Among the more dramatic changes was a requirement that all "mortgage originators" within the meaning of the MLA must be licensed by the Department of Banking. The term "mortgage originator" is extremely broad and includes virtually any person who quotes mortgage rates and elicits or accepts financial information from a borrower in connection with a mortgage application. The licensing process involves mandatory pre- and post-licensing education requirements and the successful completion of a state proficiency exam.

Because the MLA was a relatively new piece of legislation that significantly altered prior business practices, the Department of Banking established a transition period for licensees to come into compliance. Mortgage brokers were given the opportunity to register and secure provisional licenses for their employees while the Department promulgated new rules and regulations, and while approved educational providers appeared in sufficient numbers. In addition, deadlines for completing the education requirement and obtaining "full" licensing were extended several times for various reasons including, without limitation, the amendment of the MLA on August 5, 2009, to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act), 12 U.S.C. § 5101 et seq.

The last deadline for mortgage originator applicants to successfully pass all components of the mortgage originator test expired on April 30, 2010. Since that time, the Department has significantly increased enforcement of the MLA and its licensing requirements. During the second quarter of 2010, the Department initiated at least 26 enforcement actions against mortgage licensees that resulted in no less than 10 consent decrees and three orders suspending licenses. Investigators from the Bureau of Compliance, Investigation and Licensing are actively following up on complaints of unlicensed activities. These complaints may lead to unannounced visits from regulators requesting payroll records, proof of licensure and lists of loans originated going back as far as 2008. Regulators are also requesting owners provide them with written statements explaining how or why loans were originated by unlicensed personnel. Careful coordination with counsel is extremely important during these investigations, especially where there is reason to believe the investigation may identify other violations of state and/or federal mortgage laws.

The impact of the MLA and the increased enforcement on mortgage originators is significant. From an operations standpoint, outside loan officers who may have been previously treated as 1099 sub-contractors must now be kept on the payroll as W-2 employees to comply with the MLA's supervision requirements. High volume producers who are unable to pass the state's proficiency exam can no longer stay on under provisional licenses. Intake and loan processing procedures including, without limitation, the completion of a Uniform Residential Loan Application (form 1003) have to be carefully structured to ensure that customers deal only with licensed personnel. Internal company policies showing how compliance with the regulatory scheme will be accomplished have to be carefully crafted and will almost certainly be scrutinized by the Department.

From a liability standpoint, non-compliance with the MLA can be costly. The Department is authorized to impose monetary fines of up to $10,000 per violation and, in certain cases, to suspend and/or revoke a mortgage broker's license to operate. In many cases, the licensee is required to bear the costs of the Department's investigation, which can be substantial. Now that the "grace period" is over, we anticipate that the number of enforcement actions and the amount of fines imposed will dramatically increase. Clients affected by the MLA are urged to contact experienced counsel to implement best practices that comply with the myriad of new regulations. Clients who are approached by regulators should contact counsel immediately, as the careful handling of the investigation in its early stages may help avoid undesirable results down the line.

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