



Minutes

Mortgage Brokerage Commission Meeting

Wednesday, November 6, 2008

9:00 to 11:00 am

Renton City Hall

7th Floor, Council Chambers

1055 S. Grady Way, Renton, WA 98055

Attendees:

Deb Bortner, DFI
Adam Stein, Commission Chair
Jason Bloom, Commissioner
Gary Bracht, Commissioner
Jeffrey Lorsch, Commissioner
Stephen Bozick, Commissioner
Ann Pulitano, Commissioner
Don Burton, Commissioner
Guests: 35

Note taker:

Elizabeth Stancil, Administrative Assistant 5
Kim Hoss, Administrative Assistant 3

Resource persons:

Deb Bortner, DFI, Division Director
Levi Clemmens, DFI, Program Manager
James Brusselback, DFI, Program Manager
Cindy Fazio, DFI, Financial Legal Examiner

Abbreviations:

DFI = Department of Financial Institutions and/or Division of Consumer Services
MB = Mortgage Broker (subject to DFI’s authority under the MBPA)
DB = Designated Broker at the licensed Mortgage Broker
WAMB = Washington Association of Mortgage Brokers
RCW = Revised Code of Washington (here, specifically chapter 19.146 known as “The Mortgage Broker Practices Act”) *also referred to as “the Act” or “MBPA”*
WAC = Washington Administrative Code (here, specifically chapter 208-660, promulgated under “The Mortgage Broker Practices Act”) *also referred to as “the rules”*
AARMR = American Association of Residential Mortgage Regulators
HUD = the Office of Housing and Urban Development (a federal agency)
CRO = Code Reviser’s Office
CE = Continuing Education (for Designated Brokers and Loan Originators)

Future Agenda Topics:

----- Agenda Topics -----

1. Approval of Minutes from August 6th Meeting		Adam Stein	
Discussion:			
<p>Jason Bloom made a motion to add “Appoint a new Chair” under agenda item number seven, New Business.</p> <p>Jeffrey Lorsch seconded and the motion was passed by a unanimous vote.</p> <p>Jason Bloom move to approve the August 6th meeting minutes as written.</p> <p>Stephen Bozick seconded and the motion was passed by a unanimous vote.</p>			
Conclusions:			
Action items:		Person responsible:	Deadline:
<p>You are able to listen to this pod cast (recording) and review the transcribed minutes from the following address on DFI’s website: http://dfi.wa.gov/cs/mortgage.htm</p>		Elizabeth Stancil	Now

2. Rulemaking Update	Cindy Fazio	Handout	
Discussion:			
<p>The following handouts were provided to the Commissioners and Visitors:</p> <p>One Page Disclosure Summary Form</p> <p>DFI adopted the rules under the One Page Disclosure Summary Form on November 4, 2008. The rules become effective on December 5, 2008. The rules will be posted on the website along with the form. Joe Vincent and Cindy Fazio will work with the forms company to get them formally published. You are free to use them from the website as posted. Cindy Fazio is currently working on additional instructions. She hopes to have this posted to the website soon.</p> <p>Mortgage Broker Practices Act (MBPA) Rulemaking</p> <p>We are in the CR-102 phase of the rules under the MPBA. The CR-102 was filed October 22, 2008. An additional CR-102 was filed on October 31st that changes the public hearing date of the CR-102 meeting. The hearing will be held November 25, 2008 from 1:00 p.m.-3:00 p.m. in Olympia. A copy of the CR-102 and proposed rules, with the hearing date information, is posted on the website. If you have any comments regarding this rulemaking, please send them to Elizabeth Stancil at estancil@dfi.wa.gov .</p> <p>A discussion was held regarding placement of Mortgage Broker fees on line 801 versus lines 808 to 811. If you would like to hear more of this discussion please click on the podcast link below.</p> <p>SAFE Act Requires Changes to MBPA</p> <p>A Federal Law was passed at the end of July that requires loan originators (LOs) to be licensed. We will be licensing Loan Originators (LOs) for Consumer Loan companies. The SAFE Act requires changes to the MBPA. The five changes that will be made are listed below.</p> <ol style="list-style-type: none"> 1. Eliminating the Primerica exemption. 2. All LOs will be state licensed in the NMLS or registered with HUD. Anyone that is licensed as of 2009 will not have to take the exam prior to licensure until 2011. Anyone not licensed as of July 2009 will have to take 20 hours of pre-license education, and a federal test prior to licensure. DFI is considering other bonding levels. 3. There will be a bonding change. The bonding will probably increase. SAFE is suggesting a minimum of \$50,000 bonding. \$0-3 million a year would be a \$50,000 bond, \$3-10million would be \$100,000 bond, and anything above would require a \$150,000 bond. 4. An independent credit report will be pulled on each individual and that will be available to the state regulator. DFI will not be looking at credit scores to determine whether you can be licensed or not. 5. If a loan originator has ever been convicted of a felony due to dishonesty and some other types of crimes, they can never be licensed. DFI will be going back and revoking licenses of those that had those felonies in excess of seven years from the time they applied. 6. DFI may issue interim licenses if we get behind. <p>You may listen to our podcast at http://dfi.wa.gov/cs/mortgage.htm under Commission Meetings.</p>			
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3. Licensing Update		Levi Clemmens																									
Discussion:																											
<p>The chart below shows the approximate number of licensees in DFI's licensing database, STAR, and the number of those that have made the transition onto the Nationwide Mortgage Licensing System (NMLS).</p> <table border="1"> <thead> <tr> <th></th> <th>STAR</th> <th>NMLS</th> <th>% Difference</th> </tr> </thead> <tbody> <tr> <td>Mortgage Broker Main Offices</td> <td>1,441</td> <td>933</td> <td>-35.3%</td> </tr> <tr> <td>Mortgage Broker Branch Offices</td> <td>1,598</td> <td>858</td> <td>-46.3%</td> </tr> <tr> <td>Loan Originators</td> <td>8,639</td> <td>4,269</td> <td>-50.6%</td> </tr> <tr> <td>Consumer Loan Main Offices</td> <td>346</td> <td>258</td> <td>-25.4%</td> </tr> <tr> <td>Consumer Loan Branch Offices</td> <td>1,001</td> <td>913</td> <td>-8.8%</td> </tr> </tbody> </table> <p>The deadline for transitioning onto the NMLS was October 1, 2008 and the extended deadline was October 31st. We cannot guarantee a timely renewal for those that have not yet transitioned. Renewals must be submitted through the NMLS by December 1, 2008. If you have not filed a 2007 annual report for your company, your license file will be put on hold and you will not be able to renew. If an annual report is not filed you may be referred to DFI's Enforcement program.</p> <p>The default setting for NMLS is that the broker controls the LO licenses that are associated with your company. The system is expecting you to renew the licenses on their behalf. If you do not plan on paying for their renewal, you need to actively go in and release those individuals so they can renew on their own. E-licenses will be issued. Please monitor your email inbox and junk mail box after you renew.</p> <p>The Licensing staff's current turnaround time for license applications is approximately two weeks.</p> <p>It is a strong possibility that, beginning in 2009, commission meeting attendance will not satisfy the NMLS continuing education requirements. However, it most likely will be applied toward the state specific continuing education. This is all mandated by the S.A.F.E. Act. This will be communicated more clearly in 2009.</p>					STAR	NMLS	% Difference	Mortgage Broker Main Offices	1,441	933	-35.3%	Mortgage Broker Branch Offices	1,598	858	-46.3%	Loan Originators	8,639	4,269	-50.6%	Consumer Loan Main Offices	346	258	-25.4%	Consumer Loan Branch Offices	1,001	913	-8.8%
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4. Examinations Update	Levi Clemmens	Handout	
Discussion:			
<p>There were 20 exams completed from August 2008 to October 2008. This number is somewhat lower than it has been in the past. There were large exams that required a couple of weeks and numerous examiners to complete.</p> <p>There ratings were (1 being the best and 5 being the worst):</p> <p>1 – 0 companies 2 – 8 companies 3 – 11 companies 4 – 1 companies 5 – 0 companies</p> <p>These 20 exams resulted in \$17,104.37 paid-out in Borrower Refunds due to violations with consumer harm. Violations that may result in borrower refunds are failure to disclose broker fee, failure to disclose YSP, and no written explanation of increase in fees.</p> <p>A total of three examinations were referred to the Enforcement Unit for occupancy fraud or failure to respond to the examinations itself.</p> <p>Common violations</p> <ul style="list-style-type: none"> • Disclosing Mortgage Broker fees on line 801 of the good faith estimate • No written Explanation of increased fees from the GFE to HUD-1 • Failing to deposit borrower funds for payment of third party fees into a trust account • Failing to correctly disclose the Yield Spread Premium on the GFE • Failing to accurately complete TIL disclosures – Incorrect payment stream – Bottom of TIL blank – Variable Rate box not checked when loan is a variable loan • Failing to disclose the Yield Spread Premiums <p>A discussion was held regarding the requirements of the GFE and the correct lines to use when listing fees. You may listen to this discussion on our podcast at http://dfi.wa.gov/cs/mortgage.htm under Commission Meetings.</p>			
Conclusions:			
Action items:	Person responsible:	Deadline:	

5. Enforcement Update	James Brusselback	Handout
Discussion:		
The numbers of complaints received by DFI's Enforcement Unit has been rising dramatically.		
<u>Complaints received by Industry for 2008:</u>		
Consumer Loan	505	
Check Cashier/Seller/Payday	113	
Escrow Agents	114	
Money Servicers	30	
RAL	1	
Other	12	
Mortgage Broker Internal Complaints	697 (referrals from Licensing, Examinations or from other divisions in DFI)	
MBPA Loan Originators	25	
MBPA Loan Originator Applications	79 (these are referrals from the Licensing Unit about an LO application)	
MBPA Loan Originator Internal	17 (issues other than application – non-renewal, unlicensed activity, etc.)	
About 125 of the MBPA complaints were for unlicensed activity and over half of those were internal referrals.		
Over 400 of the 697 internal referrals were sent to the Enforcement Unit a couple weeks ago from the Examinations Unit pertaining to licensees that did not renew on time and have not submitting an annual report or declaration for no activity during their period of non-licensure.		
<u>Closed Complaints in 2008:</u>		
MBPA – Brokers	714	
Loan Originators Referrals	72	
Consumer Loan	489	
Check Cashier/Seller/Payday	130	
Escrow Agents	97	
Money Services	29	
Enforcement Actions (Cease and Desist Orders, Statements of Charges, Resolution by Final Order or Consent Order, etc.)		
MBPA – Brokers	36	
MBPA – Loan Originators	145 (85 involved Final Orders)	
Consumer Loan	26	
Check Cashier/Seller/Payday	6	
Escrow Agents	11	
Money Services	2	
A Statement of Charges was issued in December of 2007 against Lynden Loans. It involved issues with advertising, bait and switch, inconspicuous APRs or misrepresented terms in their advertising. Case was settled on August 9, 2008 with a 30 day suspension of the company license and Mr. Updyke and Mr. Sullivan's licenses. Settlement also included a \$75,000 fine and \$4,000 in investigative costs.		
Conclusions:		
Action items:	Person responsible:	Deadline:

6. New Business			
Discussion:			
<p>Don Burton – wants to help improve communication between the department and the industry.</p> <p>Characterization of Enforcement actions – Mr. Burton is concerned that any mistake made by a lender, broker or loan officer is characterized if there is an enforcement action in the write up “unfair and deceptive practice” or “a scheme or artifice that was employed by the company or the individual” on the resolution of a complaint? Don Burton is concerned that this characterizes a company as one that does this often. Is that DFI’s policy?</p> <p>Deb Bortner said historically we did use that language. Ms. Bortner specifically addressed the Enforcement Unit a month or two ago and asked them to be more specific about the violations and not use those terms. DFI is aware of the concern, agrees with the concern and is working on this issue.</p> <p>Policy, Education and fairness by the Department – Mr. Burton is also concerned about the methodology that DFI uses to educate and enforce their policies. He is particularly concerned that the industry is not being provided clear guidance when changes to policy and rule occur. How can the industry work with the Department to improve the communication on the rules and positions with respect to assessment fees and disclosures so we can keep our industry members informed and continue to modify and adhere to the rules?</p> <p>DFI tries to get information out to the industry. A lot of DFI’s information goes out via the ListServ. Those messages are not junk mail and DFI urges everyone to read those emails. DFI will try to do a better job of communicating changes. You can call DFI if you have any questions or concerns about new information not getting out.</p> <p>Adam Stein suggested adding an Education or Communication item to the standing agenda. Under this new item staff and commission members can discuss rulemaking activity or examinations that need to be communicated immediately. This will be added to the agenda as a standing item.</p> <p>Upcoming Commission Vacancies</p> <p>This is Adam Stein’s last meeting as a commission member and Deb Bortner thanked him for all the work he’s done as a member. He is very dedicated to his industry and helping members of the industry become better members. He has spent a great deal of time working with DFI staff and they are grateful for that.</p> <p>One mortgage broker and two loan originator vacancies will be open. Anne Pulitano and Stephen Bozick may apply for a second term on the commission.</p> <p>Stephen Bozick moved to appoint Jason Bloom as the new Chair for 2009. Adam Stein seconded. Jason Bloom accepted and all approved. Motion passed.</p> <p>2009 Meeting Schedule</p> <p>2009 meeting schedule will be set for the second Wednesday in February, May, August and November. The final dates will be posted to the website.</p> <p>To hear the complete comments and discussions, please listen to our podcast at http://dfi.wa.gov/cs/mortgage.htm under Commission Meetings.</p>			
Conclusions:			
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7. Public Comments		
<p>Discussion:</p> <p>Ken Lindberg, Lenders Mortgage and All Reverse Mortgage.</p> <p>On the One Page Disclosure Summary Form, do we need to enter months or years on the Mortgage Term line? When there is a balloon loan do we need to enter the term of amortization or the term of maturity? Response: Cindy Fazio said this will be worked out through additional instructions for using the forms.</p> <p>Mr. Lindberg is concerned because when he registered on the NMLS he received a second Mortgage Broker license that came with a Loan Originator license number. Response: Deb Bortner said this will be resolved once unique identifiers are assigned by the NMLS. There will be a long transition time for all of these changes to take place.</p> <p>Ed Irwin, Integra Mortgage</p> <p>Mr. Erwin was concerned because he noticed that there was not a signature line on the One Page Disclosure Summary Form where individuals would sign on after they've reviewed the form. Response: Deb Bortner said that you can add a line to the form if you choose to. This form can be edited to fit your needs.</p> <p>Mr. Erwin asked if there is a website where individuals can find information about fines and violations. Response: DFI does have a list of the Administrative Orders posted on our website for the public to review.</p> <p>John Long, Mortgage Compliance Attorney -</p> <p>Mr. Long had several questions for the commission and DFI staff members.</p> <p>He asked for clarification about the twenty credits of continuing education required under the SAFE Act. Can those that are currently licensed apply their past credits toward those twenty credit requirement? Response: Yes, they may use previous credits but will need to meet federal requirements and comply with federal law.</p> <p>Will current continuing education providers be grandfathered in to the NMLS? Response: No. All continuing education providers will have to submit for approval through the NMLS.</p> <p>Can you still put your origination fee on 801 if you're table funding? Response: Yes you can.</p> <p>Can you put fees on 801 for FHA and VA? Response: Yes, as long as you state who was receiving the fee.</p> <p>If you're closing off your warehouse line, do you or do you not disclose a YSP? Response: Deb Bortner took this under consideration.</p> <p>Mr. Long asked that the commission members put more of their questions and concerns on the agendas for the meetings so the industry knows they have a voice. Response: Jason Bloom let him know that the commission does work on behalf of the industry and does have regular communications with DFI. We are trying to be more efficient and effective about getting new information out to the industry. The speed of business and new regulatory over-site is moving at an incredible rate and everyone is responding as quickly as they can. Adam Stein's suggestion of finding new ways to push information out to everyone will help a great deal.</p> <p>Mr. Long pointed out that there is rulemaking commencing on the application of the Inter-Agency Guidelines and the statement of subprime lending. The draft that he saw, under Risk Assessment, is making each broker an underwriter. He doesn't think that brokers are qualified to do that. They don't have the capability of underwriting and they have a fiduciary obligation to the borrower which requires them to fulfill all instructions of the borrower. He hopes that individuals turn their attention to the rulemaking to catch these things. Response: Rulemaking updates are posted online and sent via the ListServ for everyone to review.</p> <p>Mr. Long cautioned brokers to not violate GLB when sending in Disclosure Summary Forms.</p> <p>Mr. Long described a situation where you have a yield spread premium - rate and term do not change. Yet market conditions change so the same rate and term now yields a larger YSP. He has seen situation that that requires a second disclosure. When do you have to disclose with written explanation? Mr. Long stated that it isn't proper to include the YSP in the calculation to determine whether or not you have to give a written explanation as to why it increases.</p> <p>To hear the complete comments and discussions, please listen to our podcast at http://dfi.wa.gov/cs/mortgage.htm under Commission Meetings.</p> <p>Conclusions:</p>		

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Called to Order: 9:15 a.m.

Adjourned: 11:45 a.m.