

Mortgage Regulation

NEWS

Oregon Division of Finance & Corporate Securities

Winter 2009

Administrator's message



David Tatman

This has been a year of unique challenges for the mortgage lending industry – at the division, we see this daily as the number of registered loan originators, licensed

branches, and offices continues to decline. In 2005, the division registered more than 14,000 loan originators. That number has dropped to 4,800 as of January 2009.

As your industry, our agency, and the state of Oregon weather the continuing economic recession, we continue to work to ensure a safe and competitive lending environment for consumers and the ongoing development of a qualified and professional mortgage lending industry in Oregon. Our efforts to accomplish these goals include increased examinations of in- and out-of-state mortgage lenders, a proposed requirement for licensing of loan originators in Oregon, and a strong enforcement presence in Oregon. As always, these goals are dependent on effective two-way communication between the industry and the agency.

2007 and 2008 saw representatives of the mortgage industry, consumer advocacy groups, and the agency participate in the Mortgage Lending Work Group called by the Governor. The participants worked hard to identify and develop proposals to address several of the challenges and

issues that kept reoccurring in consumer complaints and office exams. As a result, we saw significant changes in advertising practices and rules in Oregon, legislative changes in 2008 that restricted the most egregious foreclosure rescue and equity purchase scams and legislative proposals for the new 2009 legislative session. Many members of the mortgage lending industry participated but particular thanks is owed to Eric Wiley and Todd Williams, as representatives of the Oregon Association of Mortgage Professionals, for their tireless commitment to the process.

As a result of the discussions at the work group and the changes from Washington, D.C., around disclosure and licensing, the agency has proposed two bills this session. HB 2189 requires licensing of all loan originators who make residential mortgage loans. It also clarifies the agency's authority to enforce the new RESPA and TILA requirements. Our bill implements HR 3221, which Congress passed last summer and requires all states to license loan originators. The full text of the bill can be found at <http://www.leg.state.or.us>. Please also see a follow-up article on Page 4.

HB 2188 places restrictions on the use of negative amortization loans and includes ability to repay provisions. The bill also requires lenders who market and negotiate in a foreign language to provide the GFE and the TIL disclosure documents in that foreign language. The bill also provides an incentive to consumers to provide advance notice of intent to sue a lender under ORS Chapter 59. Rather than the

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Division of Finance & Corporate Securities

2008 Annual Report is due March 31, 2009

Division of Finance & Corporate Securities

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All mortgage lenders licensed in Oregon for all or part of 2008 are required to file the annual report. You can safely and easily file your annual report online at <https://www4.cbs.state.or.us/exs/dfcs/mlrpt/>.

For security purposes, you need your license and PIN to access the report form. The PIN is the same number you use for the online licensing system. If you need a PIN or have questions about completing the form, please contact one of our examiners, who are assigned to licensees based upon your company's name.

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Licensees that fail to file the annual report may be subject to a civil penalty of up to \$100 per day for each day the report is late (See Enforcement article). ■

Administrator's message, *continued* . . .

mortgage lender being surprised by the lawsuit, this notice would provide both parties the opportunity to negotiate and resolve the dispute short of court. In return for providing advanced notice, the consumer cannot be required to pay attorney fees unless the lawsuit was brought in bad faith.

You can follow both pieces of legislation on the Oregon State Legislature Web site at <http://www.leg.state.or.us>.

We have consistently heard the industry's desire that we increase our examination process and focus the exam on lending practices. In response, DFCS is also seeking legislative approval to hire more field examiners with the goal to create a two-year examination cycle. We know

examinations are critical to helping licensees understand state and federal compliance expectations while also protecting consumers from licensees that choose not to follow the law.

As always, I look forward to hearing from you about anything you see in this publication, other ideas you have for the betterment of the mortgage lending industry, and the continued improvement of communication between you and your colleagues and our agency. Please contact any of our staff listed on this page or me at any time. These are challenging economic times but it is our goal to see that this important industry continue to play a key role for Oregonians and the Oregon economy. ■



Enforcement updates

The division has issued more than 95 notice orders for failure to file the 2007 annual report that was due by Aug. 30, 2008.

Hien Williams, M-06-0039-4:

Following an order against Allegiance Mortgage LLC and Brian Fallini, M-06-0039, reported in the last newsletter, the division entered into a consent order with Hien Williams, a loan originator formerly with Allegiance. The order finds that Williams engaged in fraudulent loan origination activity by inflating borrowers' income or by making false claims about borrowers' employment. As part of the consent order, the division barred Williams from obtaining a mortgage, securities, insurance, or consumer finance license or from acting as a loan originator or loan processor in Oregon. The order further imposed a civil penalty of \$20,000 but suspended payment of the penalty for five years.

1st American Inc. dba 1st American Home Loans and Eric Otterholt, M-08-0003:

The division entered into a consent order with 1st American Inc. and Eric Otterholt in which they were ordered to pay a civil penalty of \$5,000 with \$1,500 of the civil penalty suspended. The order finds that 1st American hired a loan originator but failed to provide notice to the division of the hire, failed to obtain a criminal record check, and failed to supervise the loan originator. In addition, a loan originator for 1st American Inc. originated a loan in which Otterholt signed the application as the loan originator when he did not originate the loan. The consumer was misled regarding the loan and was not informed of her right to cancel the transaction. The consent order further orders that Otterholt is barred

from being an owner, officer, director, or experienced person of a mortgage company for a three-year period.

NLC of Oregon Inc. fka National Lending Corp., M-08-0002, and NLC of America, Inc., M-08-0040:

The division entered a final order by default against NLC of Oregon Inc., denying the company a mortgage license and imposing civil penalties of \$70,000. The order was based upon examination results revealing the company's failure to notify the division of more than 50 loan originators, failure to complete criminal records checks for 49 loan originators, continuing to employ 10 loan originators who failed to complete required education, failure to provide accurate good faith estimates and Truth in Lending disclosures, failure to have lock or float agreements in 18 files, and failure to disclose a pending license revocation in Massachusetts. After the final order was entered, the division received a licensing application from NLC of America, Inc. The application revealed that it was essentially the same company as NLC of Oregon, Inc. The division issued an order denying the company a license as NLC of America, Inc.

Real Estate Lending Group, M-08-0048:

The division entered into a consent order revoking the mortgage lender license issued to Real Estate Lending Group and barring the company owner from owning or controlling a mortgage company. The order finds that a loan originator for the company engaged in fraudulent loan origination activity by falsely stating that the borrower would occupy the residence when the loan originator knew that the borrower had no intention of occupying the residence. ■

Two new resources available on the division's Web site

A new loan originator registry can be found at <http://www4.cbs.state.or.us/ex/dfcs/LOReg/index.cfm>. The registry allows public access to view loan originators' registration status, employment history, and deadlines for continuing education. The public can also view information about mortgage companies, their licensing status, and information about who they employ and address information.

The public can also view all mortgage lending enforcement orders online at http://www.cbs.state.or.us/external/dfcs/securities/enf/orders/ml_enforcement_orders_index.html. The division will keep this information continually updated so you can see which companies have received administrative actions from the division. ■

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On the road to compliance:

FREE three-hour continuing education class: Comply With Me

DFCS and the Oregon Mortgage Lending Education Board (MLEB) have joined forces to sponsor a free new course for Oregon mortgage originators. State Examiner Anna Mahony will discuss the ins and outs of compliance in the state of Oregon at several locations across the state.

Attendees will receive three hours of continuing education credit. The course will cover many topics, including licensing, examinations, personnel ledgers, education, certificates, advertising files, client trusts, loan files, complaints, good faith estimates, and APR items.

Funded by Oregon MLEB, the events will have limited seating and require an RSVP. There will be no cost to originators to attend the course. For more information, visit the Oregon MLEB's Web site at oregonmleb.com. ■

SAFE Act

Oregon Division of Finance & Corporate Securities plans to join the Nationwide Mortgage Licensing System & Registry (NMLSR) for mortgage brokers and loan originators

The division is proud to announce our plan to use the CSBS/AARMR Nationwide Mortgage Licensing System & Registry (NMLSR) in 2010. NMLSR, developed through the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), will allow companies to conveniently manage their licenses in an electronic format through a secure Web site. The division will join this nationwide initiative, mandated by the passage of HR 3221, in January 2010.

Some of you already use the NMLSR because you are licensed as a mortgage broker or loan originator in a state that joined the system earlier this year (Washington and Idaho, for example). The division anticipates going live on the system in January 2010 for companies and will begin licensing loan originators through the system beginning April 1, 2010. We will be taking many actions

during the next several months to prepare you for the transition. Please be watching the division's Web site and your e-mail for announcements about how you can prepare to transition your license to the NMLSR.

For example, as part of the transition to the NMLSR, companies will be moving from a biennial license to an annual calendar year license. You will receive important information about the changes in your license duration with your renewal notice. Please make sure to pay careful attention to all enclosures.

Much of our communication will be sent by e-mail so please make sure your licensing examiner has your current company and loan originator information on file with the division.

You can preview features of the NMLSR online at <http://www.stateregulatoryregistry.org/NMLS//AM/Template.cfm?Section=Home3>. ■

Remember to update your contact information

Tough economic times have forced some of our licensees to close offices or move locations. Unfortunately, companies often overlook the requirement in OAR 441-860-0070 to notify the division of a change in information on the licensing application or of the closure of a branch office.

You can check to see if the division has the correct address and phone number for your company and any licensed branches by looking up your company in a license holder search on our Web site.

If you need to provide notice of a change of address, phone number, fax number, or e-mail for your principal location or any branch, submit a completed form 440-3919, change of name or address request, which is available on our Web site under Forms. If you have closed or moved a branch, you can elect to provide electronic notice via our IMLA system at www.oregonimla.org. ■

House Bill 3630 — Regulation of home mortgage loan foreclosure consultants and equity purchasers

On March 11, 2008, Gov. Ted Kulongoski signed into law House Bill 3630, which requires “foreclosure consultants” to provide a homeowner with a written contract with plain language disclosures; limits the compensation such consultants can receive; and prohibits them from acquiring any interest in the home in foreclosure. The foreclosure-consulting contract must include a full description of services to be provided and the total costs of the contract.

The bill also requires “equity purchasers” to provide the homeowner with a written contract in plain language; requires equity purchasers to ensure the homeowner has the ability to buy back the home; entitles the homeowner to a share of proceeds if the home is re-sold quickly; and requires the transfer to take place in escrow. The homeowner has the right to cancel a foreclosure-consulting or equity-purchasing contract.

For those facing foreclosure, HB 3630 will require the homeowner to be sent a notice, in plain language, with information about how to stop the foreclosure process; the amount needed to bring the loan current; and sources of counseling and advice. It also will require commercial mortgage lenders to provide a toll-free telephone number for the homeowner to get loan delinquency and repayment information and for person-to-person consultation to discuss the payment and loan-term negotiation and modification options.

The division has developed a model foreclosure notice for use by the industry. It is designed to be filled out electronically — the trustee must complete all forms that are blank before mailing it to the homeowner. The form is available in Word or PDF versions and can be found on the division’s Web site at <http://www.cbs.state.or.us/dfcs/ml/foreclosure/hb3630.html>. ■

DCBS sponsors foreclosure prevention event in May

In an effort to bring resources to struggling homeowners, the division, in partnership with the City of Portland, the Housing and Urban Development Department, and the Federal Reserve Bank, is hosting loan modification representatives from the nation’s leading loan servicing organizations in Portland on Saturday, May 2. Loan modification

representatives will be available all day to meet with consumers who are at risk for foreclosure and by appointment.

If you know consumers who are at risk of foreclosure, please direct them to the division’s Web site for upcoming event details about time and location. For more information, please call Fernando Velez at 503-947-7854. ■

Notification date quick tips:

The notification date is the date that the division first receives notice that a person is working as a loan originator for a licensed mortgage lender. The notification date sets the deadline for continuing education. Every loan originator must complete 20 hours of MLEB-approved continuing education every 24 months from the loan originator’s notification date. For instance, if a loan originator’s notification date is Jan. 31, 2002, then the loan originator must have completed 20 hours between Jan. 31, 2002, and Jan. 31, 2004, another 20 hours between Feb. 1, 2004, and Jan. 31, 2006, and another 20 hours between Feb. 1, 2006, and Jan. 31, 2008.

You can look up a loan originator’s notification date on the division’s Web site at <http://www4.cbs.state.or.us/ex/dfcs/loanorig/>.

A loan originator’s notification date does not change when the loan originator moves to another licensed mortgage lender. If the loan originator moves to a company that is exempt from licensing, such as a bank, but then moves back to a licensed mortgage lender, the notification date will be the date that the division first receives notice that the person is again working as a loan originator for a licensed mortgage lender. This is the only time that a person’s notification date will change. ■



Division of Finance & Corporate Securities

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Advertising rule changes

The division enacted new advertising rules, effective May 7, 2008. The changes centralize existing advertising rules into OAR 441-870-0080 and address growing concerns about some types of advertising seen in the marketplace. Advertising is not only loan product information distributed by traditional sources, such as newspaper and radio, but also includes the Internet, e-mail, and facsimiles.

OAR 441-870-0080 clarifies existing requirements – compliance with the Truth in Lending Act and expectations outlined in the Federal Trade Commission’s pamphlet *“How to Advertise Consumer Credit Correctly.”*

OAR 441-870-0080 also includes substantive changes to how information is disclosed in advertisements with rates or payment amounts, as well as special requirements for advertising “low doc/alt doc” loans, negative amortizing loans, or referencing a lien holder or financial institution.

All advertisements must contain your license number and company name or licensed dba. Also, if the advertisement has an interest rate or annual percentage rate, you must state the rate to at least three decimal points, except for trailing zeros. For instance, an APR of 5.712157 would be advertised as 5.712, not 5.71, but an APR of 5.210324 should be advertised as 5.21, not 5.210.

You can review the complete rule online at <http://www.dfcs.oregon.gov>. ■