



pennsylvania
DEPARTMENT OF BANKING

MARKET SQUARE PLAZA | 17 N SECOND STREET, 13TH FL | HARRISBURG, PA 17101
Ph 717.787.6991 Fx 717.787.8773 w www.banking.state.pa.us

SECRETARY OF BANKING

December 22, 2008

To All Mortgage Lender, Mortgage Loan Correspondent and Mortgage Broker Licensees under 7 Pa.C.S. Ch. 61 (Relating to Mortgage Loan Industry Licensing and Consumer Protection) (the “Mortgage Act”) and Licensees under the Consumer Discount Company Act (the “CDCA”), 7 P.S. § 6201 *et seq.* (Jointly, the “Acts”):

This letter is to announce to you that by virtue of publication in the December 20, 2008 edition of the *Pennsylvania Bulletin* (Vol. 38, No. 51), the Commonwealth of Pennsylvania Department of Banking (the “Department”) has adopted its regulation regarding the proper conduct of lending and brokering in the mortgage loan business, which will be codified at 10 Pa.Code § 46.1 *et seq.* **The regulation was effective immediately, with the exception of Subsections 46.2(b) through (i), which will be effective 90 days from the date of publication in the *Pennsylvania Bulletin* (March 20, 2009).**

The regulation provides rules for the proper conduct of lending and brokering in the mortgage loan business for brokers and lenders licensed under the Mortgage Act and all CDCA licensees engaged in the mortgage loan business and is the result of one of the policy recommendations made by the Department in its 2005 Report on Residential Mortgage Foreclosures and Abusive Lending Practices in Pennsylvania, which was requested by the Pennsylvania General Assembly in House Resolution 364 of 2003.

A complete copy of the regulation appears on the Department’s website as well as in the December 20, 2008 issue of the *Pennsylvania Bulletin*. This letter contains a brief summary of the regulation and is therefore not inclusive of all of its provisions, conditions, exceptions and details. It is vitally important for you to familiarize yourself with the regulation itself and seek guidance from your legal counsel and trade association regarding the effects of this new regulation on your business operations.

Summary of the Regulation

Subsection 46.2(a) prohibits false or misleading advertising and was **effective on December 20, 2008.**

Subsections 46.2(b) through (f) require licensees to issue a disclosure form prescribed by the Department within three business days after the application is received or prepared by the licensee.

The form will disclose: (1) if the lender providing the loan will escrow the applicable taxes and hazard insurance; (2) if the licensee is a lender with the ability to directly lock-in a loan interest rate; (3) whether the loan contains a variable interest rate or balloon payment feature; (4) whether the loan includes a prepayment penalty; and (5) whether the loan has a negative amortization feature. Licensees are also required to have applicants sign and date the disclosure form, retain the disclosure form for their records and re-issue the disclosure form if the licensee knows or reasonably should know the initial disclosure form is inaccurate. These provisions are **effective on March 20, 2009**. The Department will be making this one-page form available on its website in advance of the March 20, 2009 effective date.

Subsection 46.2(g) requires licensees to perform an ability to repay analysis when offering a mortgage loan to an applicant. Licensees must reasonably determine, based upon the documents and information provided to the licensee, that an applicant will have the ability to repay the offered loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule. Additionally, licensees: (1) are required to verify and document the income and the fixed expenses of the applicants; (2) are not permitted to primarily rely upon the sale or refinancing of the applicants' loan collateral to repay the loan; and (3) may not ignore facts or circumstances that it knows or reasonably should know would indicate that the applicant does not have the ability to repay the offered loan. Licensees are permitted to consider other factors in addition to income and fixed expenses when performing the ability to repay analysis and licensees are only required to verify and document the income that the applicant intends to rely upon in repaying the loan. Lastly, this subsection sets forth a presumption of ability to repay for certain loans and provides a framework for an analysis of loans with balloon payment features. This subsection is **effective on March 20, 2009**.

Subsection 46.2(h) exempts reverse mortgage products from the ability to repay and disclosure form provisions of the regulation, because such provisions are inconsistent with the features of reverse mortgage loans. This subsection is **effective on March 20, 2009**. Reverse mortgage loans remain subject to the rest of the regulation that was effective on December 20, 2008.

Subsection 46.2(i) addresses the continuing responsibility of licensees regarding the ability to repay analysis when there is a material change in facts or circumstances that a licensee knows or reasonably should know would substantially affect the applicant's ability to repay the offered loan. This subsection is **effective on March 20, 2009**.

Subsection 46.2(j) sets forth a series of prohibited acts in regard to mortgage loan transactions which became **effective on December 20, 2008**.

Subsection 46.2(k) requires licensee lenders to fund closed loans and prohibits licensees from delaying or failing to fund a loan based upon post-closing underwriting or quality control. A licensee lender may refuse to fund a closed loan only if there is fraud committed by the applicant. In any administrative action brought by the Department under this subsection, a licensee may raise applicant fraud as an affirmative defense; however, this subsection does not relieve or limit the liability of a licensee against any claims of borrowers due to a refusal or failure to fund a loan based upon an allegation of fraud. This subsection was **effective on December 20, 2008**.

Subsection 46.2(l) requires licensees, upon request, to provide an applicant or an authorized representative of the applicant with copies or originals of documents associated with the loan transaction, so long as the licensee is permitted to do so under state and federal law and has the documents in its possession. This subsection was **effective on December 20, 2008**.

Subsection 46.2(m) requires a licensee that holds or services a loan to provide a borrower with pay-off statements or statements of mortgage reinstatement, as applicable, within seven business days of a request by a borrower or authorized representative of the borrower. This subsection was **effective on December 20, 2008**.

Finally, Section 46.3 provides that violations of the regulation are considered violations of the Acts. This section also provides that if a loan is made in good faith in conformity with an interpretation of this regulation by the Department or the courts of this Commonwealth, no penalty for a violation shall apply, notwithstanding that the relied-upon interpretation may subsequently change. Although it is not specifically stated in the regulation, Mortgage Act and CDCA licensees are reminded that by virtue of Section 6121(13) of the Mortgage Act, 7 Pa.C.S. § 6121(13), Mortgage Act and CDCA licensees are responsible for the acts and omissions of their employees, including mortgage originators, in regard to this regulation. This section was **effective on December 20, 2008**.

Conclusion

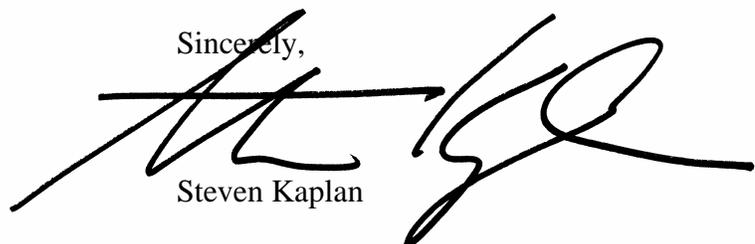
This regulation may create significant changes in the way that licensees under the Mortgage Act and CDCA conduct their mortgage business. The Department is committed to working with you to ensure the smoothest possible transition to operation under this new regulation. To that end, the Department will be offering outreach programs regarding this new regulation. Please watch your mail carefully for communications from the Department and be sure to check the Department's website, www.banking.state.pa.us, for updates.

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the regulation and is therefore not inclusive of all of its provisions, conditions, exceptions and details. It is critically important for you to read the actual regulation and seek guidance from your legal counsel and trade association regarding the effects of this new regulation on your business operations.

If you have questions regarding this regulation, please contact the Compliance Division of the Department's Bureau of Compliance, Investigations and Licensing at (717) 772-3889 or through the Department's website at www.banking.state.pa.us.

We here at the Department look forward to working with you in order to seamlessly implement this new and important regulation.

Sincerely,

A handwritten signature in black ink, appearing to be 'SK', written over a horizontal line.

Steven Kaplan