



Legislative/Regulatory Insights

A Bulletin Published by the Mortgage Bankers Association of Pennsylvania

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Date: February 4, 2008
To: All MBA OF PA Members
From: E. Robert Levy, Executive Director &
Legislative/Regulatory Counsel

I have attached a memo sent to Dave Callen, Majority Executive Director, House Commerce Committee regarding a proposed Bill to combine first and secondary mortgage loan licenses, for your information.

Thank you.

ERL/cag

Joint COUNCIL

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E. Robert Levy
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MEMORANDUM

DATE: January 29, 2008
TO: David Callen
FROM: E. Robert Levy
RE: Bill Combining First and Secondary Mortgage
Loan Licenses

Thank you for the opportunity to provide input regarding the Bill which would combine first and secondary mortgage loan licenses. One of our concerns regarding the Bill is the impact it will have upon our ability to move the licensure of loan solicitors Bills (part of the six bill package) through the Legislature at a reasonably expeditious pace. As you know, the Mortgage Bankers Association of Pennsylvania (MBAof PA) and the Pennsylvania Association of Mortgage Brokers (PAMB) had introduced the idea of licensing loan solicitors in the Commonwealth well before the subprime mortgage crisis erupted. In fact, our efforts to license loan solicitors preceded the task force that was established pursuant to the legislative resolution which led to then Banking Secretary Schenk's six bill proposal. This has been a long time in coming and it is more necessary today than it was previously as everyone recognizes the need to have better educated solicitors meeting with consumers at the crucial time when they are determining the kind of loan product they should apply for. The licensure bills would accomplish this and also create accountability, which will be strengthened by virtue of the national database that will be in effect either later this year or next year. In this regard, a loan solicitor whose license has been revoked or suspended in one state will not be able to move elsewhere and get re-licensed.

If it appears that the Bill to create one license for first and secondary mortgage loan mortgage bankers and brokers will cause the licensure bills to be held up. We would respectfully suggest that we not pursue the Bill at this time.

With regard to the substance of the Bill, we see a problem with regard to the licensing of servicers in Pennsylvania. First, there are few servicers in Pennsylvania in any event, most are large companies and national in scope. Furthermore, servicing is a highly complex process governed by state and federal law, and to have examiners become educated and immersed in servicing issues would take a considerable amount of time and expertise. Given today's circumstances, this would likely detract from the Department's capacity to enforce its laws and examine licensees who are originating mortgage loans in Pennsylvania. Therefore, we feel that to regulate servicing at this time through the Department of Banking in Pennsylvania would not be productive and could very well be counterproductive.

With regard to exemptions, it appears that affiliates of financial institutions as well as their operating subsidiaries would be exempt from licensure. We believe that this is an unwarranted exemption and goes well beyond the preemption currently enjoyed by the national banks and federal thrifts pursuant to the U. S. Supreme Court's decision in the Waters case! This type of exemption simply makes the playing field in PA even more uneven and pushes mortgage bankers and brokers toward federally chartered institutions, thereby undermining the state regulatory system.

Since the Bill deals with the jurisdiction of the Department of Banking over mortgage lenders and brokers, we think it appropriate to take the opportunity to clarify what the Legislature has always intended, namely, that the jurisdiction of the Department of Banking is limited to mortgage lending and brokerage where the subject real estate is located in the Commonwealth. This is, in fact, expressly set forth in the Consumer Equity and Protection Act portion of the statute (MBBCEPA) and the same language should be carried over to the Mortgage Bankers and Brokers Act segment of the statute where this jurisdictional requirement is implicit.

With regard to fees and charges, while third party fees are addressed and mortgage broker fees are provided for, there does not appear to be any clear provision for the allowance of fees for mortgage bankers. In the absence of such a provision, a mortgage banker would not be able to charge fees and therefore could not profitably function in Pennsylvania. In this regard, the types of fees that should be

covered would include points, discount points, origination fees, underwriting fees, document preparation fees, administrative fees, commitment fees, fees for rate locks, and other fees that are normally charged in the industry by originators and investors.

The Bill would also be an appropriate place to deal with prepayment penalties. Such fees can be quite beneficial to consumers by lowering their interest rates and by providing them types of mortgage products that are not available without prepayment fees because the loans would be too unstable and potentially costly for investors. In this regard, we have proposed that prepayment fees be allowed, notwithstanding any other law to the contrary, and limited to 3% of the amount prepaid in the first year, 2% in the second year and 1% in the third year. No prepayment fees would be allowed thereafter. In addition, the fee would only apply in the event of a refinance and not where a house is sold. The consumer would have to be given the option of a loan without a prepayment fee prior to application. It is interesting that a similar formula was contained in Barney Frank's Bill that passed the House of Representative recently. This approach prevents having to alter the loan amount from time to time that the current prohibition on prepayment fees applies to (\$50,000). Our formula would apply to all residential mortgage loans and no dollar amount would be involved!

Another issue that should be addressed deals with brokering to pre-emptive entities. As you are aware, there are entities that now pre-empt state law and are free to make loans without concern for state law restrictions such as those on prepayment penalties. We should clarify in the Bill that a mortgage banker or broker that brokers a loan to a pre-emptive entity cannot be held in violation of state law so long as the fees, charges, and other requirements imposed by the pre-emptive institution are allowable under federal law. If this is not made clear and if the interpretation of the statute is otherwise (we would hope that, as in New Jersey, such brokering would be allowed), there would be an unlevelled playing field for our state regulated creditors. Furthermore, consumers are at a disadvantage when they go to a state creditor who does not have access to the same products and features as the pre-emptive entities. For example, there will be some products at a better rate of interest with a prepayment penalty that would benefit a consumer. However, if the consumer happens to go to a state creditor that is not a subsidiary of a pre-emptive entity, that creditor will not be able to supply that product and the consumer will lose out. In any event, if a loan is legal when it is made, whether it is because it is made by a pre-emptive entity or otherwise, another party

participating in the origination of that loan should not be taken to task for violating state law.

Thank you for your consideration of these matters. I look forward to discussing them with you when we next meet.

A handwritten signature in cursive script that reads "E. Robert Levy". The signature is written in black ink and is positioned in the lower-left quadrant of the page.

ERL/cag