CHAPTER 48. FIRST MORTGAGE LOAN BUSINESS PRACTICES—STATEMENT OF POLICY

Authority

The provisions of this Chapter 48 are issued under section 310(a) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. § 456.310(a)), unless otherwise noted.

Source

The provisions of this Chapter 48 adopted December 15, 2006, effective December 16, 2006, 36 Pa.B. 7622; amended June 26, 2009, effective June 27, 2009, 39 Pa.B. 3172, unless otherwise noted. Immediately preceding text appears at serial pages (323643) to (323646).

§ 48.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—7 Pa.C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection).

Licensee—A licensee as defined in 7 Pa.C.S. § 6102 (relating to definitions).

Mortgage broker—A mortgage broker as defined in 7 Pa.C.S. § 6102.

Mortgage lender—A mortgage lender as defined in 7 Pa.C.S. § 6102.

Mortgage loan business—The mortgage loan business as defined in 7 Pa.C.S. § 6102.

Mortgage loan correspondent—A mortgage loan correspondent as defined in 7 Pa.C.S. § 6102.

Mortgage originator—A mortgage originator as defined in 7 Pa.C.S. § 6102.

§ 48.2. Purpose.

The purpose of this chapter is to provide guidance to licensees under the act regarding what constitutes dishonest, fraudulent or illegal practices or conduct in any business, unfair or unethical practices or conduct in connection with the mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act, as contemplated under 7 Pa.C.S. § 6139(a)(3) and (10) (relating to suspension revocation or refusal). Conduct or practices that the Department believes to be dishonest, fraudulent, illegal, unfair, unethical, negligent or incompetent under the act may result in an administrative action against the licensee by the Department under 7 Pa.C.S. § 6139(a)(3) and (10), as applicable. In reviewing licensee conduct and practices, the Department will consider the totality of circumstances in each case, including the actions of licensees, in determining whether licensee conduct and practices are inconsistent with the act.

§ 48.3. Dishonest, fraudulent, illegal, unfair or unethical, or negligent or incompetent practices or conduct in the mortgage loan business.

The following paragraphs provide guidance as to what the Department will consider when reviewing licensee conduct for dishonest, fraudulent or illegal practices or conduct in any business, unfair or unethical practices or conduct in connection with the mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act and examples of these kinds of activities within the context of the mortgage loan business. The examples listed under each paragraph are for illustrative purposes only and do not limit or otherwise alter the Department's discretion or the applicability of the guidance contained in each paragraph to all licensees.

(1) A dishonest practice or conduct is characterized by a lack of truth, honesty or trustworthiness, or is deceptive or implies a willful perversion of the truth to deceive, cheat, or defraud.

Example A: In the process of obtaining a mortgage loan for a consumer, a mortgage originator employed by a mortgage broker discloses to the consumer in the Good Faith Estimate that the mortgage broker's fee for the transaction will be $1,000, although the mortgage originator knows that the fee will be much higher. There are no material changes to the loan prior to closing. The consumer appears at the loan closing and discovers when reviewing the HUD-1 settlement sheet that the mortgage broker's fee is $3,000.

Example B: A consumer tells a mortgage originator employed by a mortgage broker that she seeks a fixed-rate mortgage loan without a prepayment penalty that has an interest rate within a certain range. The mortgage originator knows that the consumer does not qualify for such a fixed-rate mortgage loan, but does not inform the consumer of that fact. Additionally, in all legally-required disclosures it is indicated that the consumer is getting a fixed-rate loan without a prepayment penalty. However, when the consumer arrives at the loan closing, the mortgage loan that is offered is a variable-rate loan with a prepayment penalty.

Example C: A mortgage loan correspondent designs and issues targeted loan solicitations that purposefully appear to come from Federal or State government agencies or consumers' existing lenders, or both.

(2) A fraudulent practice or conduct is characterized by deceit or trickery, an intentional perversion of the truth to induce another to part with something of value or to surrender a legal right, or an act of deceiving or misrepresenting. Fraud also includes any other definition of fraud under applicable law.

Example A: A mortgage originator employed by a mortgage broker has promised a certain low-rate mortgage loan to a consumer. However, the consumer does not have the minimum debt-to-income ratio set by the lender preferred by the mortgage originator's employer to qualify for the lowest-rate mortgage loan offered. Therefore, the mortgage originator changes the W-2 statement of the consumer to reflect a higher income for the consumer without the consumer's knowledge, and then submits the documentation to the lender.

Example B: An employee of a mortgage lender contacts a real estate appraiser with a request to perform an appraisal and informs the appraiser that the sale price of the property is $150,000. The employee knows that the property will not appraise for that amount, but promises the appraiser future business if the appraiser ''can make the deal work.'' The mortgage loan is closed by the mortgage lender based upon the appraisal report showing the value of the property as $150,000.

Example C: A consumer seeks a particular mortgage loan from a mortgage broker but does not have sufficient income or assets to obtain the specified product offered by one of the mortgage broker's lenders. After the mortgage broker explains the problem to the consumer, the consumer tells the mortgage broker he forgot to mention previously that he makes double his previously-stated income based upon a side business. The consumer later provides documentation to the mortgage broker regarding the additional income. The mortgage broker, although suspicious of the sudden change in the consumer's circumstances, does not question the consumer on the additional income and submits a loan application including the additional income to the lender. The mortgage loan is closed by the lender and the lender later discovers that the purported additional income never existed.

(3) An illegal practice or conduct is characterized as not according to or authorized by law.

Example A: A mortgage broker fails to provide a consumer with a good faith estimate within 3 business days of receiving the consumer's mortgage loan application as required by the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. §§ 2601—2617) in a situation where the lender has not rejected the application within 3 days.

Example B: A mortgage loan correspondent fails to implement a plan to safeguard confidential consumer information as required by the Gramm-Leach-Bliley Act and the Federal Trade Commission's Privacy and Safeguards Rules.

Example C: A mortgage lender advertises an interest rate without conspicuously disclosing the annual percentage rate and identifying the qualification terms, as required by the Truth-in-Lending Act (15 U.S.C.A. §§ 1601—1667f).

(4) An unfair practice or conduct is characterized as being marked by injustice, partiality or deception or being inequitable in business dealings. An unethical practice or conduct is characterized as not conforming with the moral norms or standards followed in the mortgage loan business or profession.

Example A: A consumer tells a mortgage originator employed by a mortgage broker that he seeks a $30,000 fixed-rate home equity loan on a house that the consumer has advised the mortgage originator he intends to remain in permanently. Although the mortgage originator's employer is able to provide the requested loan, the mortgage originator ''steers'' the consumer to variable-rate products with balloon payment features for which the mortgage originator's employer, and thus the mortgage originator, will receive higher compensation than with a traditional fixed-rate home equity loan.

Example B: A lender has an agreement with a mortgage broker to provide qualified consumers a certain interest rate. The mortgage broker then tells a consumer who qualifies for the certain interest rate that the interest rate is locked in with the lender; however, the consumer was not asked by the mortgage broker or lender to sign a lock-in agreement with the lender. The lender later informs the mortgage broker that the lender is not going to honor the agreement between the mortgage broker and the lender to provide certain interest rates. Therefore, the mortgage broker is unable to offer the consumer a mortgage loan with the promised interest rate and the consumer has no written lock-in agreement to enforce against the lender.

Example C: A mortgage lender enters into a lock-in agreement with a consumer. During the lock-in period, interest rates rise. The mortgage lender decides to delay closing until the lock-in agreement with the consumer expires, thus causing the consumer to lose his locked-in interest rate and forcing the consumer to accept a mortgage loan with a higher interest rate.

(5) Negligence in performing any act for which the licensee is required to hold a license under the act is characterized by the definition of negligence as used by the courts of this Commonwealth. Incompetence in performing any act for which the licensee is required to hold a license under the act is characterized as inadequate or unsuitable for a particular purpose, or lacking the qualities needed for effective action.

Example A: A mortgage originator employed by a mortgage lender takes mortgage loan applications from consumers on behalf of the licensee, but then leaves the company. The mortgage lender fails to follow up on the former employee's application files. A consumer assumes that his mortgage loan is being processed by the mortgage lender until he contacts the mortgage lender as the closing date on his home purchase approaches. The mortgage lender realizes the error but is unable to provide the applied-for mortgage loan in time for the closing date.

Example B: A mortgage broker routinely fails to timely forward information received from consumers that was requested by the lenders and which is necessary to meet lenders' underwriting criteria. As closing approaches, the lenders receive the consumers' information and determine that the consumers do not qualify for the loans promised by the mortgage broker, thereby causing the consumers to delay closings or obtain different loans, or both.

Example C: A mortgage lender consistently fails to file mortgage satisfaction pieces, thereby repeatedly causing consumers to have to send notices to satisfy to the mortgage lender to get the mortgage lender to issue mortgage satisfaction pieces regarding the consumers' paid-off mortgage loan obligations.

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