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Arizona Mortgage Laws and Regulations

Introduction

LegalEase was asked to review and summarize any legislation since January of 2007 (including pending legislation) affecting the mortgage industry in Arizona in the following areas:

I. MORTGAGE ORIGINATION

1. Pending legislation since January of 2007

i) 2008 Bill Tracking AZ H.B. 2349

DATES OF INTRODUCTION: January 6, 2008

LAST ACTION: March 6, 2008

STATUS: Referred to Senate Committee on Rules.

SUMMARY: This bill establishes a loan originator program within the Department of Financial Institutions. It amends Sections 6-122, 6-126, 6-901, 6-903, 6-909, 6-943 AND 6-947, Arizona Revised Statutes.

Regarding licensing, this bill:

- Specifies that beginning in January 1, 2010, a person is prohibited from acting as a loan originator unless licensed as a loan originator.
- Establishes a one-year period for the license.
- Requires mortgage broker or mortgage banker licensees who employ loan originators to comply with loan originator issuance of license, renewal, inactive status, fees and application laws.
- Specifies that a license is not transferable or assignable.
- Allocates no more than 120 days for the superintendent of DFI to grant or deny a loan originator license after receiving a completed application and fees and specifies that an

applicant who has been denied a license may not reapply for a license before one year from the date of the previous application.

- Specifies that the superintendent will keep the loan originator's license until a written notice of employment by a mortgage broker is received.
- Requires an application for renewal include original certificates evidencing the loan originator's successful completion of six continuing education units for the one-year period immediately preceding the license renewal.
- Specifies that licenses that are not renewed by January 31 expire.
- Establishes requirements for returning an inactive loan originator license to active status.
- Requires a mortgage broker or mortgage banker supervise the activities of a licensed loan originator who is employed by the mortgage broker or mortgage banker and keep and maintain the loan originator's license during the loan originator's employment. A copy of the license must be available for public inspection.
- Instructs immediate notification of loan originator's change of address.
- Requires the mortgage broker or mortgage banker to notify the superintendent of a licensee's termination and to deliver the terminated loan originator's license to the licensee within five business days.
- Provides grounds for the superintendent to deny suspend or revoke a license.
- Authorizes the superintendent to suspend or deny a license if the licensee or the applicant is indicted for fraudulent banking offenses.
- Specifies that noncompliance does not affect validity of a mortgage loan.
- Exempts from the requirement for licensure any entity subject to regulation and supervision by a federal banking agency, and any operating subsidiary or affiliate of such entity including any employee or exclusive agent of such entity.

Regarding education/examination, this bill:

- Requires that beginning January 1, 2010, an applicant for a loan originator license renewal to have completed six continuing education units before submitting the renewal application.
- Provides a waiver for the examination and course of study requirements for any person applying for a loan originator license who within the six months immediately before the submission of the application, has been a mortgage broker or mortgage banker licensee.

- Requires DFI to supervise the administration of the examination to license applicants at least once every six months and allows the test to be given in either written or electronic format.
- Prohibits the applicant to take the examination more than two times per year.
- Requires all examinations be given, conducted and graded in a fair and impartial manner and without unfair discrimination. The Committee must inform the applicant of the result of the examination within 30 days of the examination.
- Requires an applicant for renewal of a mortgage broker or mortgage banker license complete 12 continuing education units before submitting the renewal application.
- Requires the loan originator examination to include a section on the applicable laws and principles of appraisal independence.

Regarding fees and exemptions, this bill:

- States fees are to be determined by the superintendent of DFI.
- Exempts persons employed by a person who does business under any other law of this state or another state while regulated by the laws of another state or the United States relating to financing and lending, from loan originator licensing laws.
- Exempts licensed mortgage brokers, mortgage bankers or commercial mortgage bankers from loan originator laws.
- Exempts employees of a commercial mortgage banker from loan originator laws.
- Exempts employees and exclusive agents of a mortgage banker from loan originator laws.
- Exempts an employee of a licensed loan originator if the licensee affirms in writing to the Superintendent that the licensee will not make or negotiate a mortgage loan that has security in the form of a residential dwelling of one to four units.
- Exempts a person who, as a seller of real property, receives one or more mortgages or deeds of trust as security for a purchase money obligation.
- Requires a mortgage broker and a mortgage banker to reasonably supervise loan originators who are licensed pursuant to Title 6, Chapter 9, Article 4 and who are employed by the mortgage broker or mortgage banker.

- Prohibits a loan originator acting on the loan originator's own behalf from accepting any monies or documents in connection with an application for a mortgage loan.
- Prohibits a person without a loan originator license to act or be employed as a loan originator or receive compensation in connection with arranging or negotiating a mortgage loan.
- Prohibits any solicitation of mortgage business by a loan originator acting on the loan originator's own behalf.
- Prohibits a loan originator from making loans that are less than \$5,000 or not secured by a mortgage or deed of trust.
- Prohibits an employed loan originator from being concurrently employed by another mortgage banker or mortgage broker.
- Prohibits a loan originator from collecting compensation as a real estate broker unless the loan originator is a licensed real estate agent and the person providing the compensation is informed that the loan originator will be receiving the compensation.
- Prevents a loan originator from accepting any assignments of the borrower wages or salary in connection with lending activities.
- Prohibits a loan originator from receiving or disbursing monies in servicing or arranging a mortgage loan.
- Prohibits a loan originator from making a false promise or misrepresentation or concealing an essential or material fact in the course of the mortgage broker business.
- Prohibits a loan originator from failing to truthfully account for the monies belonging to a party to a mortgage loan transaction or failing to disburse monies in accordance with the employing mortgage broker agreements.
- Prohibits a loan originator from engaging in illegal or improper business practices.
- Prevents a loan originator from requiring a person seeking a loan secured by real property to obtain property insurance coverage that exceeds the replacement cost.
- Prohibits a loan originator from originating a mortgage loan unless employed by a mortgage broker.
- Prohibits a loan originator from advertising or soliciting mortgage business without using the principal place of business name and license number issued to the licensee's employer.

ii) 2008 Bill Tracking AZ S.B. 1504

DATE OF INTRODUCTION: February 5, 2008

LAST ACTION: FEBRUARY 25, 2008

STATUS: From Senate Committee on Financial Institutions, Insurance and Retirement

SUMMARY: This bill would establish an optional loan originator registration program within the Secretary of State's Office.

This bill:

- Allows an originator to register with the SOS, and to appeal a denial of registration by the SOS to the superior court.
- Prohibits the SOS from registering an originator who has been convicted on any crime resulting from a violation of any statute regulating banks and financial institutions.
- Requires the SOS to maintain a public list of all registered originators that is available on the SOS website, upon request in person and by mail in writing.
- Requires an originator that registers with the SOS to provide the following information:
 - a) the name or names under which the originator conducts business.
 - b) the address of the principal place of business of the originator and the address of each office that the originator maintains in Arizona.
 - c) the originator's taxpayer number.
 - d) a list by state of each name under which the originator has operated in the preceding ten years.
 - e) a full set of fingerprints.
 - f) a statement that the originator has not been convicted of any crime resulting from a violation of any statute regulating banks and financial institutions.
- Requires the SOS to submit fingerprints and fees to the Department of Public Safety for the purpose of obtaining a state and federal criminal records check.
- Requires the Arizona Department of Administration (ADOA) to approve loan originator schools that meet ADOA standards and procedures and that provide education and ethics classes for loan originator registrants.
- Allows the SOS to certify a financial institution's education program for originators if it is equivalent to or better than schools that are approved by ADOA.
- Requires an ADOA-approved school to notify the SOS upon an originator's successful completion of the classes.
- Requires the SOS to issue a certificate of distinction to an originator upon notification by the school.
- Requires the SOS to issue a certificate of distinction to an originator who:
 - a) works for a financial institution.
 - b) has completed the institution's certified education program.

- c) is registered with the SOS.
- d) has a verified letter from the financial institution stating that the education requirements have been satisfied.
- Requires the SOS to maintain a list of originators on the SOS website who hold certificates of distinction.
- Allows an originator who holds a certificate of distinction to use the title or designation of “Certified Mortgage Consultant.”
- Classifies as a class 6 felony the act of falsely representing oneself as a registered loan originator, a certificate of distinction holder or a certified mortgage consultant.
- Allows a person who is wronged by an originator violating any registration requirement or rule to file a complaint with the Attorney General.
- Requires the Attorney General to adopt rules and establish procedures to receive and investigate complaints, including a requirement that the Attorney General must notify the subject of a complaint.
- Requires the Attorney General to maintain the complaint information on its website:
 - a) permanently if the complaint is adjudicated and wrongdoing is determined on the part of the originator.
 - b) for three years if the complaint is not substantiated.
- Defines terms, including “loan originator.”
- Appropriates \$10,000 from the Fund to the SOS in FY 2008-2009.
- Becomes effective on January 1, 2009.

2. Legislation since January of 2007

There is no new legislation since January of 2007.

II. MORTGAGE LICENSING

1. Pending legislation since January of 2007

- i) 2008 Bill Tracking AZ H.B. 2350

DATE OF INTRODUCTON: January 16, 2008

LAST ACTION: March 6, 2008

STATUS: Referred to Senate Committee on Rules.

SUMMARY: This bill relates to license renewal fees and schedules for commercial mortgage bankers. The Department of Financial Institutions (DFI) regulates three mortgage lending entities: mortgage brokers, mortgage bankers, and commercial mortgage bankers. Currently, all three entities have different dates for approving, renewing, requesting inactive status, suspending and expiring of a license.

According to DFI, licensees who have licenses in multiple states must comply with different renewal dates and paper-based systems in multiple states. Many states' mortgage regulators are changing to the December 31st renewal so that they can participate in the states' owned and operated Nationwide Multistate Licensing System ("NMLS"). Uniform, nationwide, renewal dates will allow Arizona licensees to complete online licensing renewals or applications using NMLS.

NMLS is an Internet-based system modeled on the registry used to regulate securities brokers and dealers. It will provide a basis for coordination among the states for mortgage supervision and consumer protection and will prevent, for example, mortgage originators or brokers with complaints or violations on their records from moving to a different state and starting over. Forty-two state agencies in 40 states have stated their intent to use the system.

Mortgage Brokers

For licenses approved on or before September 30, 2008

- Requires the license renewal fee for subsequent years be paid on or before December 31, 2009.
- Allows a licensee to request inactive status on or before September 30, 2008.

For licenses approved after or renewed on September 30, 2008

- Requires a licensee to pay the renewal fee on or before December 31, 2009 and on or before December 31st of each following year.
- Suspends licenses not renewed by December 31st and restricts the licensee from acting as a mortgage broker.
- Establishes requirements for renewing a suspended license.
- Stipulates licenses not renewed by January 31st expire.
- Requires a licensee to request inactive status for the following year on or before December 31st.
- Provides inactive status requirements.
- Stipulates that a licensee may not be on inactive status for more than two consecutive years or for more than four-years in any 10-year period.

Mortgage Bankers

Licenses approved on or before March 31, 2008

- Requires the license renewal fee be paid on or before December 31st for subsequent years beginning in 2009.

Licenses approved after or renewed on March 31, 2008

- Requires license renewal fees be paid by December 31st beginning in 2009.
- Suspends licenses not renewed by December 31st and restricts the licensee from acting as a mortgage broker.
- Establishes requirements for renewing a suspended license.
- Stipulates licenses not renewed by January 31st expire.

Commercial Mortgage Bankers

Licenses approved after or renewed on March 31, 2008

- Suspends licenses not renewed by December 31, 2009 and by December 31st of each following year and restricts the licensee from acting as a commercial mortgage banker.
- Establishes requirements for renewing a suspended license.
- Stipulates licenses not renewed by January 31st expire.
- Requires a licensee may request inactive status on or before December 31st of each year for the following license year.

Miscellaneous

- Applies the changes to the mortgage bankers and commercial mortgage bankers' licenses retroactively to March 30, 2008.
- Makes technical and conforming changes.

2. Legislation since January of 2007

There is no new legislation since January of 2007.

III. MORTGAGE FEES AND CHARGES

1. Pending legislation since January of 2007

- i) 2008 Bill Tracking AZ H.B. 2140

INTRODUCTION: January 11, 2008

LAST ACTION: January 22, 2008

STATUS: Referred to House Committee on Rules

SUMMARY: This bill pertains to the agency relationship of a Mortgage Broker with the Borrower. It amends Title 6, Chapter 9, Article 1, Arizona Revised Statutes, By Adding Section 6-911.

This bill:

- provides that a mortgage broker has an agency relationship with a borrower when acting in the capacity of a broker and is therefore required to act in the borrower's best interest

and in the utmost good faith, not compromise the borrower's right or interest for that of another, disclose to the borrower all material facts that might affect the borrower's rights or interests; prohibits a mortgage broker from accepting, giving, or charging undisclosed compensation, or realizing undisclosed remuneration.

- Mortgage broker should use reasonable care in performing duties.
- Account to a borrower for all of the borrower's monies and property the mortgage broker receives as the agent.
- Does not prohibit a mortgage broker from collecting a fee for services rendered that has been disclosed to the borrower in advance of the provision of the services.
- Does not require a mortgage broker to obtain a loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business or to obtain a loan for the borrower from a mortgage lender with whom the mortgage broker does not have a business relationship.

ii) 2008 Bill Tracking AZ H.B. 2517

DATE OF INTRODUCTION: January 18, 2008

LAST ACTION: January 28, 2008

STATUS: Referred to House Committee on Rules

SUMMARY: This bill concerns homeowner protection; relates to mortgage broker duties. It amends Section 6-909, Arizona Revised Statutes; Relating to Mortgage Brokers. 6-909 relates to prohibited acts by mortgage brokers and the new amendment seeks to include the following additional prohibited acts:

- Shall not arrange for a residential mortgage loan without verifying the borrower's reasonable ability to repay.
- Shall not engage in churning.
- "Churning" means knowingly or intentionally making, providing or arranging for a residential mortgage loan when the new residential mortgage loan does not provide a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.
- Shall not make any loan with the intent that the loan will not be repaid and that the residential mortgage broker will obtain title to the property through foreclosure.
- Shall not make any loan that is of a lower investment grade if the borrower's credit score or comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan that is of a higher investment grade.
- Shall not charge a fee for a product or service if the product or service is not actually provided or misrepresent the amount charged by or paid to a third party for a product or service.

- Shall not compensate, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a residential mortgage or that is being offered as security.

The section does not limit a mortgage broker's or exempt person's ability to rely on criteria other than the borrower's income and financial resources to establish the borrower's reasonable ability to repay a residential mortgage loan, except that the other criteria must be verified through reasonably reliable methods and documentation.

2. Legislation since January of 2007

There is no new legislation since January of 2007.

IV. CONTINUING EDUCATION FOR MORTGAGE INDUSTRY PROFESSIONALS.

1. Pending legislation since January of 2007

See Section I above.

2. Legislation since January of 2007

There is no new legislation since January of 2007.

IV. ANY SIGNIFICANT OR REGULATORY OR REGULATORY EFFECT ON THE MORTGAGE INDUSTRY.

1. Pending legislation since January of 2007

i) 2008 Bill Tracking AZ H.B. 2506

DATE OF INTRODUCTON: January 18, 2008

LAST ACTION: MARCH 3, 2008

STATUS: In House Committee on Financial Institutions and Insurance

SUMMARY: This bill concerns reverse mortgages. Reverse mortgages are offered through private lenders, government agencies and mortgage brokers. According to the United States Department of Housing and Urban Development, the number of reverse mortgages is on the rise in Phoenix. In 2005, there were 919 reverse mortgages, up 59 percent from the 2004 total of 577. In 2006, the number jumped more than 216 percent, to 2,905.

This bill:

Reverse Mortgage Agreement

- Permits whole or partial prepayment without penalty at any time during the term of the reverse mortgage.

- Places the following conditions on the repayment of a reverse mortgage:
 1. Absences from the home lasting 60 consecutive days or less can not cause the reverse mortgage to become due and payable.
 2. Absences from the home lasting more than 60 consecutive days, but less than one year, can not cause the reverse mortgage to become due and payable so long as the borrower takes prior action that secures and protects the home in a manner specified in the reverse mortgage agreement.
 3. The creditor's right to collect reverse mortgage proceeds is subject to the applicable statute of limitations for written loan contracts and, notwithstanding any other law, begins on the date that the reverse mortgage becomes due and payable according to the reverse mortgage agreement.
 4. The creditor must prominently disclose any interest rate or fees in the reverse mortgage agreement.
- Requires a creditor that uses a language other than English to communicate to the borrower to deliver to the borrower the reverse mortgage documents as well as a translation of the reverse mortgage documents in the language used in communications with the borrower.
- Allows for a fixed interest rate, adjustable interest rate, a combination of fixed and adjustable interest rate, compound interest and interest that is contingent on the value of the property at the time the reverse mortgage is executed, matures or on changes in value between closing and maturity.
- Authorizes costs and fees charged by the creditor, or the creditor's designee, originator or servicer. These costs and fees may include, but are not limited to, costs and fees charged on execution of the reverse mortgage agreement, on a periodic basis or on maturity.
- States that the reverse mortgage may become due and payable if:
 1. The home securing the mortgage is sold or title to the home is transferred,
 2. All borrowers cease occupying the home as a principal residence,
 3. Any fixed maturity date agreed to by the creditor and borrower occurs, or
 4. An event specified in the reverse mortgage agreement that jeopardized the creditor's security occurs.

Prohibited Practices

- Prohibits reductions in the amount or number of periodic advances to the borrower based on any adjustment in the interest rate.
- Prohibits a creditor from requiring an applicant to purchase an annuity as a condition of obtaining the reverse mortgage.
- Prohibits a creditor or broker who arranges a reverse mortgage from:

1. Offering an annuity to the borrower before the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.
2. Referring the borrower to anyone for the purchase of an annuity before the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage.

Financial Counseling

- Mandates that before accepting a final and complete application for a reverse mortgage or assessing any fees, the creditor must:
 1. Provide the borrower with a plain language statement advising the borrower about financial counseling before obtaining the reverse mortgage.
 2. Provide the borrower a list of at least five housing counseling agencies approved by the United States Department of Housing and Urban development to provide reverse mortgage counseling. At least two of the agencies must be able to provide counseling by telephone.
 3. Receive certification from the borrower or the borrower's representative that the borrower has received the required counseling. The certification is required to be signed by the borrower and the agency counselor, and must include the date of the counseling as well as the name, address and telephone number of the counselor and the borrower. The creditor is required to keep the certification for the term of the reverse mortgage.

Enforcement

- States that acts or practices that violated A.R.S. Title 6, Chapter 16 constitutes consumer fraud and is subject to enforcement through private action and enforcement by the Attorney General.
- Stipulates that any provision of a reverse mortgage agreement that violates A.R.S. Title 6, Chapter 16 is unenforceable against the borrower.
- Requires any private action against a creditor to be commenced within six years after the closing of the reverse mortgage.
- States that the remedies provided in A.R.S. Title 6, Chapter 16 are not intended to be the exclusive remedies available to the borrower.

Miscellaneous

- Requires the first page of any deed of trust securing a reverse mortgage to contain the statement, "This deed of trust secures a reverse mortgage loan," in 16-point boldface type or larger.
- States that creditors who fail to make required advances, or who fail to cure a default after notice, must pay the borrower treble the amount wrongfully withheld plus legal interest.

- Requires all reverse mortgages issued on property in Arizona to comply with A.R.S. Title 6, Chapter 16.
- Prohibits any person from waiving any provision of A.R.S. Title 6, Chapter 16.
- Defines *creditor* and *reverse mortgage*.

2. Legislation since January of 2007

There is no new legislation since January of 2007.

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