

May 2018

Minnesota Residential Mortgage Originators and Servicers

Re: Minnesota Department of Commerce 2018 Residential Mortgage Originator and Servicer Supervisory Guidance

Dear Licensee:

Through its Financial Institutions Division, the Minnesota Department of Commerce (Department) has conducted a series of routine examinations of Residential Mortgage Originators and Servicers licensed in Minnesota to analyze compliance with state statutes and federal regulations governing mortgage origination and servicing activities. In addition, the Department's Enforcement Division has continued to conduct investigations of residential mortgage originators and servicers.

This guidance is intended to bring attention to the most common deficiencies the Department has identified in both routine examinations and investigations with respect to Minnesota Statutes. The Department requests that licensees conduct any necessary review of their practices in order to ensure compliance with the applicable laws and rules.

The common deficiencies are as follows:

- 1. Interest Rate Lock and Discount Point Agreements:** Failure to properly disclose the five requirements of the agreement, complete the agreement in its entirety, or include a disclaimer that the statement of current terms is not an offer, as required in Minnesota Statutes Section 47.206.
- 2. Net Tangible Benefit:** Failure to demonstrate the tangible net benefit to a consumer for refinance loans and engaging in "churning" according to Minnesota Statutes Section 58.13, subdivision 1(a)(25).
- 3. NMLS Unique Identifier:** Failure to put the NMLS unique identifier on all application forms, solicitations, advertisements, including business cards or Web site, according to Minnesota Statutes Section 58A.20.
- 4. Record Retention – Complaint Policy:** Failure to maintain a file for all materials relating to a complaint for a period of 60 months according Minnesota Statutes Section 58.14, subd. 4.

5. **Mortgage Call Report Filings and Surety Bond:** Failure to file timely Mortgage Call Reports according to Minnesota Statutes Section 58A.17, and failure to update surety bond amounts when the Mortgage Call Report is filed for the most recent quarter, according to Minnesota Statutes Section 58.08, subdivision 1a(c).
6. **Agency v. Non-Agency:** Failure to properly disclose agency relationships, the non-agency relationships of lenders, and advance fee arrangements according to Minnesota Statutes Sections 58.15, 58.16, and 58.161.
7. **Late fee disclosures:** Failure to disclose correct late fees according to 12 C.F.R. 1026.41(d)(1), incorporated in Minnesota Statutes Section 58.13, subdivision 1(a)(8).
8. **Private Mortgage Insurance (PMI):** Failure to cancel PMI upon written request when the current principal balance is 80% or less than the **current** fair market value of the property, providing all other requirements are met, in accordance with Minnesota Statutes Section 47.207.
9. **Escrow Accounts:** Failure to properly manage and remit funds in escrow accounts and failure to competently communicate with insurance companies and taxing authorities to ensure proper disbursements of escrow funds. See Minnesota Statutes Sections 58.13, subdivision 1(a)(5) and 58.12, subdivision 1(b)(2)(v).
10. **Unlicensed Hard Money Lending:** Creating loans that are primarily secured by a mortgage on residential real property requires a residential mortgage originator license. There is no exemption if the intended use of the property is to flip it, the buyer is a company, or the property will be an investment property. See Minnesota Statutes Sections 58.02, subdivision 18 and 58.04, subdivision 1.

Included with this letter is a fact sheet that summarizes most of these common deficiencies, the applicable law, and the corrections required. If you find that your company is deficient in any of the above noted items, **please take corrective action immediately**. Failure to do so may result in administrative disciplinary action, including civil penalties of up to \$10,000 per violation pursuant to Minnesota Statutes Section 45.027, subd. 6 (2017).

If you are no longer doing business as residential mortgage originator or servicer in Minnesota, please follow the surrender instructions on the Nationwide Multistate Licensing System (NMLS) to surrender your licenses in Minnesota. See the website for further details:

<https://mortgage.nationwidelicencingsystem.org/slr/PublishedStateDocuments/MN-Residential-Company-Mtg-Originator-Surrender-Checklist.pdf>, and

<https://mortgage.nationwidelicencingsystem.org/slr/PublishedStateDocuments/MN-Residential-Company-Mtg-Servicer-Surrender-Checklist.pdf>.

If you have any questions, you may contact us at 651.539.1720 for questions regarding examinations or 651.539.4032 for questions regarding enforcement investigations.

Sincerely,

Mark F. Hastie

Director of Non-Depository Financial Institutions

Matthew P. Boyer

Audit Director – Enforcement Division

Common Examination Deficiencies

Interest Rate Lock and Discount Point Agreements

Under Minnesota Statutes §47.206, Subdivision 2, a lender offering borrowers the opportunity to enter into an agreement in advance of closing shall disclose, in writing, to the borrowers at the time the offer is made: (1) a definite expiration date or term of the agreement, which may not be less than the reasonably anticipated closing date or time required to process, approve, and close the loan; (2) the circumstances, if any, under which the borrower will be permitted to close at a lower rate of interest or points than expressed in the agreement; (3) the steps required to process, approve, and close the loan, including the actions required of the borrower and lender; (4) that the agreement is enforceable by the borrower; and (5) the consideration required for the agreement.

Except as permitted by Minnesota Statutes §47.206, Subdivision 4, a borrower or lender may not maintain an action on an agreement unless the agreement is in writing expresses consideration, sets forth the relevant terms and conditions, and is signed by the borrower and the lender. The agreement shall set forth clear language to disclose if any circumstances would permit the borrower to close at a lower rate of interest and points. In addition, a lender may not offer or induce a borrower to accept an oral agreement and a borrower may not be permitted to orally accept an agreement, provided that if the borrower and lender have not executed a written agreement, the subdivision does not prohibit the offer and acceptance of an oral agreement which is offered and accepted during a period no greater than ten days before closing.

Many examinations revealed that management relies on the loan operating system generated forms. However, these forms were often incomplete, blank, or did not contain the requirements indicated above for an enforceable interest rate lock or discount point agreement. Many of the agreements were signed by the borrower, but did have a corresponding signature by the mortgage loan officer. Licensees are encouraged to review the system generated forms for accuracy and conduct quality control reviews to ensure the forms are executed properly.

Net Tangible Benefit

According to Minnesota Statutes § 58.13, Subdivision 1 (25), a residential mortgage originator shall not engage in "churning." As used in this section, "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.

The lender or broker can demonstrate the borrower's concrete advantage to refinance a loan by soundly documenting the Tangible Net Benefit (TNB). Although the statutes do not require a disclosure signed

by the borrower, detailing this information for the borrower will provide evidence of the decision to refinance a loan and create a rebuttable presumption of the absence of “churning.”

Many examination files reviewed did not have a reasonable analysis of the TNB to borrowers. The TNB did not demonstrate the comparison of the borrower’s current loan to the proposed loan, the cost of the new loan and the borrower’s circumstances in order to comply with Minnesota Statutes § 58.13, Subdivision 1 (25).

NMLS Unique Identifier

Minnesota Statutes Section 58A.20 requires that: “the unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Web sites...”

If the company name or logo is on an item that fits in the list in the statute, then the NMLS identification number must be there as well. An individual mortgage loan officer should make sure that any business card, website, or other advertisement has their individual NMLS identification number as well as that of the company.

Record Retention – Complaint Policy

Minnesota Statutes Section 58.14, subd. 3 requires that a licensee or exempt person must “investigate and attempt to resolve complaints made regarding acts or practices subject to the provisions of this chapter. If a complaint is received in writing, the licensee or exempt person must maintain a file containing all materials relating to the complaint and subsequent investigation for a period of 60 months.”

Although a licensee may have a complaint policy, several are not maintaining a file containing all the materials related to complaint and any subsequent investigation. Licensees must maintain some form of file for documentation of complaints.

Mortgage Call Report Filings and Surety Bond

Minnesota Statutes Section 58A.17 requires that reports of condition must be in form and condition required by the NMLS. Mortgage Call Reports (MCR) are due 45 days after the end of each quarter. The standard financial condition reports are due 90 days after the end of the year. Licensees must file them both timely and accurately. Licensees should take care to read the instructions as they do change periodically.

Consequently, upon filing of timely and accurate Mortgage Call Reports, mortgage loan originators must review their loan volume for the previous four quarters, and either maintain, decrease or increase its surety bond to reflect the amount from the preceding year.

Agency v. Non Agency

Whether a Residential Mortgage Originator acts as a lender or Broker will generally determine the agency relationship with a borrower. Loans reviewed during examinations indicated Residential Mortgage Originators disclosed to the borrower, both a “non-agency” disclosure and an “agent” disclosure.

When the Residential Mortgage Originator acts as the lender of record and does not accept an advance fee, the non-agency disclosures should be signed by the borrower within three business days of accepting an application. The practice of executing in both capacities, as agent and non-agent, may be considered a violation of Minnesota Statutes § 58.13, Subdivision 1(a)(17). This section states in part that licensees shall not represent to act as the borrower's agent after providing the non-agency disclosure required by section 58.15, unless the disclosure is retracted and the licensee or exempt person complies with all of the requirements of section 58.16.

In instances when the lender acts as a Broker, an agency agreement is required to be provided to the borrower in advance of the provision of services for fees collected. See Minnesota Statutes §58.161.

Late fee disclosures

For mortgage servicers, 12 CFR 1026.41 (d)(1) states, in part, that “a periodic statement required by this section shall include the payment due date, the amount of any late fee, and the date on which that fee will be imposed if payment has not been received, and the amount due, shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options.”

For mortgage originators, Minnesota Statutes Section 58.13, Subdivision 1, (19), no person acting as a residential mortgage originator or servicer shall make, publish, disseminate, circulate, place before the public, or cause to be made, directly or indirectly, any advertisement or marketing materials of any type, or any statement or representation relating to the business of residential mortgage loans that is false, deceptive, or misleading.

Both servicers and originators should implement procedures to ensure that the basis for the late payment penalty stated on the mortgage note matches the information provided to the borrower on the closing disclosure, billing statement or any other correspondence.