



Dodd-Frank Mortgage Loan Originators and the CFPB

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The Consumer Financial Protection Bureau (CFPB) was created to implement the massive Dodd-Frank Wall Street Reform and Consumer Protection Act (P. L. 111-203), generally known as Dodd-Frank. On January 1, 2014, the CFPB will implement its final rules governing “high cost” mortgages, loan appraisal standards and qualifications for loan originator activity. These are critical issues affecting manufactured home sales and financing.

One piece of good news is that CFPB’s proposed rules will provide that loans on new manufactured homes, whether or not they include the land, and loans on existing mobile homes, including homes built before 1976, exclusive of the land, will be exempt from the new appraisal guidelines. The new appraisal guidelines require lenders issuing loans to comply with detailed appraisal standards and to provide borrowers with additional notifications and appraisal copies. Naturally, all this adds to a lender’s cost of issuing a secured loan and could discourage some altogether. This exemption is therefore good news for manufactured home sales and the industry in general.

CFPB has also added requirements effective January 1, 2014 (advanced from January 10, 2014) intended to help clarify activity that *will not* classify a manufactured home retail seller or its employees as Mortgage Loan Originators (MLO). This is critical because if a retailer or its employees are classified as a MLO under Dodd-Frank, employee compensation could

trigger the more stringent “high cost” and “ability-to-repay” mortgage restrictions and require registration under the SAFE Act. The rules are intended to reduce incentives for loan originators to steer buyers into particular types of loans and the compensation rules under Dodd-Frank provide a broader MLO definition. Thus it is important under Dodd-Frank to understand what activities may or may not qualify as MLO

employees who do not take a loan application, who do not *offer or negotiate or advise* (consumers) buyers on available *credit terms* selected based on the buyer’s financial characteristics but perform only purely administrative or clerical tasks. Credit terms as defined in the regulations are interest rates, fees and *other costs* associated with issuing a residential mortgage loan.

Applying the examples of MLO and non MLO activity under the CFPB regulations, the important points for community owners and affiliate or separate manufactured home retail sellers are that the following activities *will not* make a person a MLO under Dodd-Frank:

(1) Generally explaining or describing the loan application process without advising on interest rates, loan costs or other loan features;

(2) Responding to buyer inquiries about mortgage loans such as explaining terminology like “debt-to-income ratio” or an originator’s lending policies like its “loan-to-value ratio” policy, or its product related services;

(3) Responding to buyer requests informing buyers of loan rates that are publicly available for specific types of loan products, such as advertised on a lender’s website, but without communicating to the buyer whether he/she meets the qualifications for a particular loan product;

(4) Merely confirming written offer terms already transmitted to the buyer by an originator;

(5) Collecting information on behalf of the buyer such as supporting documentation for a loan application but without presenting a spe-

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activity.

Under Dodd-Frank, a MLO is a person, natural or organization, who, in *expectation* of direct or indirect compensation or other monetary gain or for *direct or indirect compensation or other monetary gain*, performs any of the following activities: (1) takes a residential mortgage loan application, or (2) *offers, arranges, or assists* a consumer in obtaining or applying to obtain a residential mortgage loan, or (3) negotiates, or otherwise obtains or makes a loan for another person; or (4) *advertises or otherwise represents to the public* that such person *can or will perform* any of these activities. This includes an *employee, agent, or contractor* of the creditor or loan originator organization if the employee, agent, or contractor meets this definition.

However, CFPB regulations under Truth In Lending (Regulation Z) specify that a MLO does *not* include: (1) a retail seller or its em-

cific loan offer verbally or in writing;

(6) Seller financing by a person, natural or organization, of no more than three homes during any 12 month period provided that the financing is fully amortized, seller makes a good faith determination that the buyer has a reasonable ability to repay the financing and the financing has a fixed interest rate, or adjustable rate that adjusts only after five or more years subject to rate adjustment indexing limitations under widely available indices such as U. S. Treasury securities or LIBOR; and

(7) Seller financing by a natural person, estate or trust of no more than one home owned by the person, estate or trust provided the repayment schedule does not result in negative amortization and subject to the same rate qualifications for natural person and organization seller financing.

On the other hand the regulations describe the following as activity that will qualify a person as a MLO under Dodd-Frank's definition:

(1) Based on the buyer's financial characteristics, i. e. , income level, expenses, assets and employment stability, a person initially contacts and orients the buyer to a particular

lender's processing or credit terms that may be available to that buyer;

(2) Discussing interest rates, fees or other loan costs with a buyer that is or may be available to that buyer;

(3) Populating a buyer's loan application, including online or taking information from the buyer over the phone to complete a loan application; and

(4) Oral or written action directed to a buyer that can "affirmatively" influence a buyer to select a particular lender for a loan.

If a community owner is selling and financing community owned homes at the rate of no more than three during any 12- month period, there seems little risk of running afoul of either Dodd-Frank or the SAFE Act.

But, retail manufactured home dealers, or community owners with affiliate dealerships selling on a larger scale that rely on community management for sales and marketing activity need to be very familiar with the Dodd-Frank/CFPB rules defining and governing "loan origination activity." Moreover, even if a community owner jumps through the MLO licensing hoops, using onsite management or sales

center personnel to perform other than purely administrative or clerical tasks in conjunction with manufactured home purchase financing or refinancing could easily trigger "high cost" mortgage or "ability to repay" federal compliance requirements.

The foregoing "summary" is intended as an alert to manufactured housing sales and financing issues implicated by the extensive and complex Dodd-Frank/CFPB rules that will go into effect January 1, 2014. This summary is not intended to be relied on or seen as a substitute for legal advice. Please consult with your legal counsel for advice specific to your situation involving these high risk and complex legal issues.



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