Overview of New York Mortgage Laws

Introduction

In the 1980s, changes in tax laws, banking laws, and the secondary market allowed non-depository lenders and mortgage brokers to emerge as regular players in the mortgage lending business. The growth of the mortgage brokering business was phenomenal. Statistics showed that: “In 2001, mortgage brokers were originating more than $1 trillion in loans annually. This was equivalent to roughly 55 percent of all mortgages originated in the United States.”

Working independently of heavily regulated financial organizations such as banks, credit unions, and savings and loans, mortgage brokers and non-depository lenders were negotiating and making loans without direct accountability to any regulatory agency. Unfortunately, the growth and success of the business lured some unscrupulous players, prompting state and federal legislators to propose regulatory controls for this new group of mortgage professionals.

Federal legislation lagged behind state initiatives, and state agencies that regulated financial institutions became the primary regulators of mortgage brokers, non-depository lenders, and related mortgage professionals. New York began regulating mortgage brokers in 1987 under Article 12-D of the Banking Laws. In 2004, 2007 (effective in 2008) and most recently, in 2009, the New York Legislature amended the New York Banking Laws. The most recent amendment includes the registration and regulation of mortgage loan originators under Article 12-E. New York law authorizes the New York State Banking Department (Department) to license mortgage brokers and to regulate their mortgage lending activities.

In 2008, and in response to the mortgage lending crisis, the federal government sought to ensure minimum licensing standards for all mortgage loan originators with the enactment of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). The S.A.F.E. Act attempts to make licensing requirements for state-regulated mortgage professionals more uniform by requiring every state to meet the following minimum standards for all loan originators:

- 20 hours of pre-licensing education
- Eight hours of annual continuing education (New York requires three additional hours of NY specific content)
- Criminal background checks
- Surety bond and net worth requirements

The federal S.A.F.E. Act also requires the use of the Nationwide Mortgage Licensing System (NMLS) for the submission of all license applications and the reporting of enforcement actions against loan originators and other mortgage professionals to the NMLS.

New York responded to the directives issued by the federal government in the S.A.F.E. Act by revising New York Banking Law, with heavy amendments to Article 12-E.

The revisions to Article 12-E that were made to bring the law into compliance with the standards established under the federal S.A.F.E. Act include those that require license applicants to:

- Complete background checks
- Post surety bonds
- Use the Nationwide Mortgage Licensing System (NMLS) for the submission of license applications
- Complete pre-licensing education and continuing education hours

The New York Legislature adopted the amendments to Article 12-E to create regulatory controls for individuals who originate mortgage loans. These individuals include loan originators employed by New York mortgage brokers, independent contractors who are licensed as mortgage brokers, and any substantial stockholders of an originating entity who engage in loan origination activities.

The following course will review the licensing requirements under both laws. The first section of the course addresses the licensing requirements for mortgage brokers and mortgage bankers regulated under Article 12-D. The second section addresses the licensing requirements for mortgage loan originators under the revised Article 12-E, which made New York compliant with the federal S.A.F.E. Act. The final section of the course will review the provisions of New York’s Home Equity Theft Prevention Act.

**New York Department of Banking**

New York law authorizes the New York State Banking Department (Department) to license mortgage brokers and to regulate their mortgage lending activities. The New York Department of Banking was established in 1851 and is the oldest regulatory agency in the nation. In 1932, the Banking Board was created by N.Y.S Banking Law, Sections 13 and 14, and was tasked with advising and cooperating with the Banking Department in the formulation of banking standards. The Board is a quasi-legislative body that creates regulations for the conduct of banking and financial services in New York.

The Superintendent of Banks (Superintendent) serves as Chairman of the Board and Executive Head, and the Board’s 17 members possess broad powers over areas affecting banking supervision. The Banking Board may create and administer laws concerning mortgage brokers, mortgage bankers, loan servicers and loan originators. The Board also has statutory authority to define proper and fraudulent practices of mortgage professionals.

New York Banking Law provides the Banking Department with the authority to, among other things, ensure the safe and sound conduct of financial businesses and maintain public confidence in the banking system. The Banking Department’s official mission statement is to “allow the
financial industry to expand and prosper through judicious regulation and vigilant supervision, to educate and protect consumers while promoting economic growth and ensuring that the financial system is safe and accessible to all.”

The Department is the primary regulator for state-licensed and state-chartered financial entities and other financial institutions operating in New York including mortgage bankers and brokers and loan originators. The Banking Department has five key supervisory divisions, a staff of over 400 bank examiners and support from legal, financial and administrative teams.

In 2008, the Banking Department regulated 238 mortgage bankers and 2,172 mortgage brokers. The number of regulated bankers and brokers was smaller than 2007, due largely in part to credit restrictions and the continuing housing crisis. The Department’s response to the crisis was highlighted by:

- Increased regulatory oversight
- Enhanced examinations
- A focus on loan modifications
- A partnership with state and federal agencies in joint examinations, focusing on subprime and nontraditional lending

New York Law and Regulatory Definitions

Articles 12-D and 12-E of New York Banking Law regulate the licensing procedures and regulations for mortgage professionals. However, New York mortgage professionals are not only regulated by Article 12-D and 12-E of New York Banking Law but by various statutes and regulations concerning home loan disclosures, distressed properties, advertising regulations and taxes.

Part 410 of the Banking Board Superintendent’s Regulations supplements Article 12-D and provides regulatory guidance on issues relating to mortgage broker licenses such as record requirements, annual reports and surety bond. Part 420 of the Banking Board Superintendent’s Regulations outlines the Department requirements as they relate to mortgage loan originators. The Part 420 regulations discussed in this course are the revised version of the regulations adopted by emergency legislation on June 13, 2010.

Certain provisions in the General Regulations of the Banking Board also govern the conduct of mortgage professionals. Part 38 of the Banking Board Regulations covers advertising, application and commitment disclosures and procedures. Part 38 also details improper conduct and the penalties that may result from that conduct. A large section of Part 38 regulates proper disclosure of information to applicants and agreements between mortgage professionals and borrowers. Part 41 is entirely devoted to high-cost home loan regulations and prohibitions. Mortgage professionals are also required to comply with certain provisions in the New York Real Property laws. Specifically, this course addresses two sections of the New York Foreclosure

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2 http://www.banking.state.ny.us/mission.htm
3 http://www.banking.state.ny.us/dep.htm
Prevention and Responsible Lending Act – the Home Equity Theft Prevention Act (HETPA) and Distressed Property Consulting Contracts. HETPA (Section 265-A of N.Y.S Real Property Laws) became effective February 1, 2007. HETPA is intended to address instances of “home equity theft” that occur when homeowners of residential property are in default on their mortgage payments or the property is in foreclosure.

HETPA provides homeowners with information and disclosures so they can make informed decisions when “equity purchasers” seek a sale or transfer of the homeowner’s property. The law provides remedies for homeowners in transactions which involve deceit, lack of fair dealing, misleading representations and unfair contract terms.

Distressed property consulting contracts are also regulated by New York Property Law. Distressed property consultants are required to follow these regulations when contracting with homeowners who are in default on their mortgage loans or facing foreclosure.

As mentioned above, various New York laws directly and indirectly affect the mortgage business. For example, New York Tax Law is also relevant to mortgage professionals. Article 11, Section 251- entitled “Tax on Mortgages” imposes a tax on mortgages when recorded in the state. This course will provide a brief overview of that law.

**Regulatory Definitions (3 NYCRR§38.1 and 12-E §599-b)**

To have a better understanding of the statutes and regulations discussed throughout this chapter, it is helpful to familiarize yourself with the terms and definitions used in New York law. Since almost every law or regulation has a section devoted to definitions, only a few of the common terms will be defined here with other terms defined in each applicable section:

**Advertisement:** “Material used or intended to be used to induce the public to apply for a mortgage loan.” Methods of advertising include direct mail, newspaper and magazine ads, radio and television broadcasts, billboards, electronic media and any other similar display. Information that is disseminated through any of these media that concerns “…a mortgage loan to be solicited, processed, negotiated or funded by a mortgage broker, mortgage banker or exempt organization...” is considered an advertisement. The General Regulations of the Banking Board exempt promotional items from the classification of advertising – these include items with 15 words or less such as balloons, hats, pens, etc. (3 NYCRR §38.1(a))

**Commitment:** A written or electronically transmitted offer to make a mortgage loan signed by a licensee or exempt organization. (3 NYCRR §38.1(g))

**Commitment agreement:** A commitment accepted by an applicant for a mortgage loan. The acceptance must be evidenced by either a handwritten or digital signature to the extent that the signatures are recognized as binding under New York State Law. (3 NYCRR §38.1(h))
Employee: Refers to either of the following -

- Any individual performing a service for any one of either a mortgage broker, mortgage banker or exempt organization for whom such entity would be liable for withholding taxes, or
- An individual engaged in regulated activities as an independent contractor of a mortgage broker, mortgage banker or exempt organization

(3 NYCRR §38.1(l))

Individual: A natural person. (12-E §599-b(5))

Lock-in agreement: A written or electronically transmitted agreement between a mortgage banker or exempt organization and an applicant for a mortgage loan which, subject to the terms set forth in the agreement, obligates the mortgage banker or exempt organization to make a mortgage loan at a specified rate and a specific number of points, if any. (3 NYCRR §38.1(o))

Lock-in fee: Points or other fees, or discounts taken by a mortgage broker for transmittal to a mortgage banker or exempt organization or taken directly by a mortgage banker or exempt organization as consideration for the making of a lock-in agreement. (3 NYCRR §38.1(p))

Nontraditional mortgage product: Any mortgage product other than a 30-year fixed-rate mortgage. (12-E §599-b(10))

Originating entity: A person or entity licensed or registered pursuant to Article 12-D of the New York Banking Law or other employer of mortgage loan originators approved by the Superintendent. (12-E §599-b(11))

Person: An individual or any corporation, company, limited liability company, partnership, association or other entity. (12-E §599-b(12))

Prevailing rate: The mortgage loan rate that is set by the mortgage banker or exempt organization after the time a commitment is issued but prior to, or on, the closing date. The prevailing rate can be fixed or variable. (3 NYCRR §38.1(x))

Residential mortgage loan: A loan to a natural person made primarily for personal, family or household use, secured by either a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real property. The term also includes a certificate of stock or other evidence of ownership in, and proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property. Finally, a residential mortgage loan includes the refinance or modification of an existing loan. (3 NYCRR §38.1(t) and 12-E §599-b(8))

Residential real property: Real property located in New York improved by a one- to four-family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons. However, the term
Mortgage Broker and Mortgage Banker Licensing

Article 12-D of the New York Banking Law regulates the licensing and activities of mortgage brokers and bankers in New York. A “mortgage broker” is defined as, “a person or entity registered... to engage in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to solicit, process, place or negotiate mortgage loans for others.” (12-D §590(1)(g)) Brokers are also referred to as registrants under New York Law. Mortgage bankers are persons or entities licensed pursuant to Article 12-D to engage in the business of making mortgage loans in New York and must be licensed. Licensing under Article 12-D applies to individuals and entities making five or more mortgage loans, in any one calendar year, which are secured by one- to four-family residential properties in New York.

Persons, partnerships, associations, corporations or other entities engaging in the business of servicing mortgage loans in New York must be registered with the Superintendent as mortgage loan servicers. The Superintendent may refuse to register a mortgage loan servicer on the same grounds that a registration certificate may be refused to be issued to a mortgage broker.

In order to be able to identify each of the individuals who are required to complete portions of the application for a mortgage broker or banker license and to comply with particular provisions of the law, it is necessary to understand the following additional definitions:

**Making a mortgage loan:** For compensation or gain, either directly or indirectly, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan or a mortgagor as a mortgage loan. (12-D §590(1)(c))

**Soliciting, processing, placing or negotiating a mortgage loan:** For compensation or gain, either directly or indirectly, doing any of the following:
- Accepting or offering to accept an application for a mortgage loan
- Assisting or offering to assist in the processing of an application for a mortgage loan
- Soliciting or offering to solicit a mortgage loan on behalf of a third party
- Negotiating or offering to negotiate the terms or conditions of a mortgage loan with a lender on behalf of a third party

(12-D §590(1)(d))

**Mortgage loan servicer:** A person or entity registered pursuant to New York Banking Law that engages in the business of servicing mortgage loans for property located in New York. Sole proprietors and companies that engage in the business of receiving scheduled periodic payments from borrowers pursuant to terms of a mortgage loan must register as mortgage loan servicers. (12-D §590(1)(h))
Servicing mortgage loans: Receiving scheduled periodic payments from a borrower pursuant to the terms of a mortgage loan and forwarding the payments to the owner of the loan (or other third parties) pursuant to the terms of mortgage servicing loan documents or a servicing contract. This includes amounts for escrow accounts as well as the principal and interest and other amounts received from the borrower. (12-D §590(1)(i))

Control of an Entity and NMLS Definitions

When a licensing applicant is a partnership, association, corporation or other form of business organization, the names and complete business and residential addresses of each member, director and principal officer must be on the application.

When submitting forms to the NMLS, it is important to be able to accurately identify those individuals who are “control persons” so that the applicant can list their names on the MU1 form and obtain completed MU2 forms that provide contact and background information for each individual who has authority to control the mortgage broker’s business. To ensure that license applicants make no mistakes in identifying their control persons, they need to know the NMLS definitions for “control person” and “control.” These definitions, which are provided on the MU1 and MU2 forms, are:

Control person: An individual that directly or indirectly exercises control over a license applicant.

Control: The power, directly or indirectly, to direct the management or policies of a company. An individual is considered to have control if he/she:

- Is a director, general partner or executive officer
- Directly or indirectly has the right to vote 10% or more of a class of voting securities
- Has the power to sell or direct the sale of 10% or more of a class of voting securities
- Is the managing member of a limited liability company (LLC)
- Is a partner in a partnership with the right to receive upon dissolution, or has contributed, 10% or more of the capital

When completing the MU1 form, mortgage broker applicants must also provide information about “control affiliates.” The NMLS defines control affiliates in its Explanation of Terms on the MU1 form. A control affiliate is, “A partnership, corporation, trust, LLC, or other organization that directly or indirectly controls, or is controlled by, the applicant.”

Exemptions for Mortgage Brokers and Bankers (12-D §590(2) and (4))

There are exemptions to Article 12-D for mortgage loan broker and banker licensing, and one way to distinguish between those individuals and entities that are exempt is to remember that the New York Legislature adopted the Act to fill a regulatory vacuum. The purpose of the law is to designate a regulatory agency and establish regulatory controls for mortgage professionals and
businesses that are not supervised by other regulators, such as the federal bank regulatory agencies. 4

The licensing provisions for mortgage loan brokers and bankers do not apply to any exempt organization or entities exempted in accordance with Banking Board Regulations.

Exempt organizations include:

- Insurance companies
- Banking organizations and foreign banking corporations licensed by the Superintendent or the Comptroller of the Currency to transact business in New York
- National banks, federal savings banks, federal savings and loan associations, federal credit unions, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any instrumentality created by the United States or any state with the power to make mortgage loans

The following are also exempt from mortgage broker and mortgage banker registration and licensing:

**Real estate broker or salesperson:** Persons associated with a licensed real estate broker to list for sale, buy or negotiate the purchase/sale/exchange of real estate, or to negotiate a loan (other than a mortgage loan) on real estate is exempt. However, if a real estate broker accepts a fee for services rendered in connection with the solicitation, processing, placement or negotiation of a mortgage loan, he/she must register under Article 12-D. (12-D §590(2)(b))

**Attorneys:** Attorneys who solicit, process, place or negotiate a mortgage loan incidental to their legal practice are exempt from registration. (12-D §590(2)(b))

**Builders as sellers:** Persons or entities that both build and sell residential real property are not required to obtain a license or register under Article 12-D. To qualify for the exemption, the builder or financing subsidiary must make the mortgage loan with respect to residential real property it has built through a licensee or exempt organization which is acting as its agent in compliance with New York Banking Law. (12-D §590(2)(d))

The registration provisions relating to mortgage loan servicers do not apply to any exempt organization, mortgage banker, or mortgage broker as long as the exempt person notifies the Superintendent that it is acting as a mortgage loan servicer and complies with any regulation applicable to mortgage loan servicers.

**Submitting Applications to the NMLS**

One of the goals of the NMLS is to establish an online database and licensing system “…that will streamline the licensing process for both regulatory agencies and the mortgage industry by

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4 The federal bank regulatory agencies are: the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Association, and the Federal Reserve.
providing a centralized and standardized system for mortgage licensing." 5 One of the steps towards creating this database is the submission of all license applications, including both initial and renewal applications, through the NMLS.

It is important to note that the NMLS does not make licensing decisions. State regulatory agencies, such as the New York Banking Department, continue to review applications to determine whether to issue a license to an applicant. However, applicants are required to use the uniform application forms that are provided by the NMLS and to submit the completed forms online. The NMLS uses four types of application forms. They are:

**Form MU1:** This is the form used by business entities and sole proprietors seeking a license as a mortgage lender (banker), mortgage broker, or loan servicer. It requests information on the name, address, organization, and ownership of the business. The form also requires applicants to complete criminal action, civil action, regulatory action, and financial disclosures and requires personal identifying information on owners, officers, partners, and control persons.

**Form MU2:** License applicants must submit this form along with the MU1 form. It requests biographical information for individuals identified as control persons on the MU1 form including owners, officers, and partners. On this form, individual control persons must disclose any criminal, civil, or regulatory action in which they are or ever have been involved, and disclose personal financial information. Control persons must sign this portion of the application before a notary and obtain the notary’s seal. There is no separate fee for processing this form.

**Form MU3:** A license applicant must submit this form with the MU1 form if it is opening a branch office. The form is also used for additional branch offices that a licensee opens after obtaining its initial license.

**Form MU4:** This is the form used by individuals seeking a license as a mortgage loan originator. It requests information on the applicant’s name, address, gender, and date and place of birth. The form also requires applicants to complete criminal action, regulatory action, civil action, and financial disclosures. Through this form, applicants give authorization for all current and former employers and law enforcement agencies to provide the information pertinent to the applicant’s fitness to serve as a loan originator. License applicants must sign this portion of the application before a notary and obtain the notary’s seal.

When submitting applications to the NMLS, applicants owe fees to the NMLS and to the state regulator. The NMLS application processing fees are:

- **$100:** Mortgage broker/mortgage banker applications
- **$20:** Branch office applications
- **$30:** Mortgage loan originator applications

Fees submitted to the NMLS are nonrefundable.

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New York Investigation Initial Fees

Mortgage banker applicants must submit a $3,000 investigation fee, and mortgage broker applicants must submit a $1,500 investigation fee. Both types of applicants must submit $105 for the fingerprint processing fee.

Ensuring Financial Responsibility of Brokers and Bankers

Evidence of financial responsibility is required of applicants for mortgage broker and banker licenses. An assessment of financial responsibility is made on the basis of information disclosed to the Department in license applications and with credit checks. License applicants must also meet net worth requirements or obtain a surety bond.

Financial Disclosures

Applicants for mortgage broker and banker licenses are required to complete financial disclosures on the MU1 and MU2 forms. The MU1 form requires the business entity seeking a license to disclose whether it has:

- Within the past ten years, operated as a mortgage lender or broker that was the subject of a bankruptcy petition
- Ever had a bonding company deny, pay out, or revoke a bond
- Any unsatisfied judgments or liens pending

The MU2 form requires control persons, which include principals and executive officers, to disclose whether they have:

- Within the past ten years, filed a bankruptcy petition or been the subject of an involuntary bankruptcy action
- Within the past ten years, exercised control over an organization that has filed a bankruptcy petition or been the subject of an involuntary bankruptcy action
- Ever had a bonding company deny, pay out, or revoke a bond
- Any unsatisfied judgments or liens pending

The New York Banking Department requires that mortgage broker applicants also submit a list of their three most utilized lenders. Lenders must be banks, licensed mortgage bankers or exempt entities. A personal financial statement must also be included in an initial mortgage broker application.

Business Documentation

Both mortgage banker and mortgage broker applicants must maintain documentation from the Secretary of State showing they are eligible to conduct business in New York. A Certificate of Good Standing is required of both bankers and brokers. Additionally, banker and broker applicants must submit a copy of a Certificate of Incorporation, the Articles of Organization and
Operating Agreement or a Partnership Agreement. A list of trade names that the banker or broker plans to use must also be supplied to the Department. Foreign companies (out of state businesses) must first get permission from the Secretary of State to conduct business in New York before submitting an application.

The following business documents must also be submitted by mortgage broker and mortgage banker applicants:

- Corporate resolutions
- Business plan
- Fair lending plan
- Certificate of Compliance
- Worker’s compensation insurance policy
- Copy of leases
- Ownership structure and organizational chart
- Dual agency affidavit

**Net Worth and Surety Bond Requirements**

**Mortgage Bankers (3 NYCRR §410.1 and §410.8)**

Applications for mortgage banker licenses must include an affirmation of financial solvency (financial statement). The financial statement must demonstrate all of the following:

- An adjusted net worth at least $250,000
- An existing line of credit in an amount of not less than $1,000,000 provided by an unaffiliated banking institution, insurance company, or similar credit facility approved by the Superintendent
- A corporate surety bond has been issued by a New York bonding company or an insurance company

The principal amount of the surety bond may not be less than $50,000. The maximum required surety bond is $500,000, and surety bond amounts are determined by the volume of a licensee’s business. The bond requirements are as follows:

<table>
<thead>
<tr>
<th>Aggregate $ Amount of NY Loans Closed</th>
<th>Required Amount of Surety Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300,000,000+</td>
<td>$500,000</td>
</tr>
<tr>
<td>$200,000,000 - $299,999,999</td>
<td>$350,000</td>
</tr>
<tr>
<td>$100,000,000 - $199,999,999</td>
<td>$250,000</td>
</tr>
<tr>
<td>$30,000,000 - $99,999,999</td>
<td>$150,000</td>
</tr>
<tr>
<td>$10,000,000 - $29,999,999</td>
<td>$100,000</td>
</tr>
<tr>
<td>$0 - $9,999,999</td>
<td>$50,000</td>
</tr>
</tbody>
</table>
Mortgage Brokers (3 NYCRR §410.14)
New York does not have a net worth requirement for mortgage brokers. However, it does require surety bonds for mortgage broker registrants with an amount ranging from $10,000 to $100,000 based on its number of applications taken. The amount of the required bond is as follows:

<table>
<thead>
<tr>
<th>Number of New York Applications</th>
<th>Required Amount of Surety Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>600+</td>
<td>$100,000</td>
</tr>
<tr>
<td>300 – 599</td>
<td>$75,000</td>
</tr>
<tr>
<td>100 - 299</td>
<td>$50,000</td>
</tr>
<tr>
<td>25 - 99</td>
<td>$25,000</td>
</tr>
<tr>
<td>0 - 24</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

The amount of the surety bond for mortgage brokers is determined from information submitted in the annual Volume of Operations Report (VOOR). Adjustments to the amount of the bond must be made within 30 days after filing the applicable VOOR. A registered mortgage broker may submit a sworn statement indicating the number of applications taken during the first half of the calendar year if the number, on an annualized basis, would change the required amount of the surety bond.

Mortgage Servicers (3 NYCRR §418.12)
Mortgage loan servicers must also meet net worth requirements and are required to have a net worth of $250,000 or 1% of outstanding principal balance of aggregate loans serviced. The ratio of a loan servicer’s adjusted net worth to total assets must be at least 5%. At least 10% of the adjusted net worth must consist of cash, cash equivalent or readily marketable securities. Evidence of net worth meeting these minimums must be submitted to the Superintendent. The surety bond for servicers is $250,000, regardless of the amount of loans serviced by the registrant.

Mortgage servicers are also required to maintain minimum fidelity bond and errors and omissions (E&O) insurance coverage of $300,000. The requirement is adjusted depending on the amount of loans serviced:

<table>
<thead>
<tr>
<th>Aggregate Amount of New York Loans Serviced</th>
<th>Required Amount of Fidelity Bond and E&amp;O Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000,000 or less</td>
<td>$300,000</td>
</tr>
<tr>
<td>Of the next $500,000,000</td>
<td>Plus 0.15%</td>
</tr>
<tr>
<td>Of the next $400,000,000</td>
<td>Plus 0.125%</td>
</tr>
<tr>
<td>Of the amount over $1 billion</td>
<td>Plus 0.100%</td>
</tr>
</tbody>
</table>
Ensuring Ethical Responsibility

Background checks, fingerprints, and disclosures regarding past or pending criminal, civil, or regulatory actions are the tools used for determining whether a license applicant is ethically fit to obtain a license as a mortgage banker or broker from the Department. Authorization for background checks and the additional information needed to determine ethical fitness are provided to the Department during the license application process.

Criminal Background Check and Credit Report

A criminal background check for license applicants begins with the submission of fingerprints. The Banking Department requires the applicant to submit fingerprints to the Division of Criminal Justice Services and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks on all of the following individuals:

- Any business license applicant
- All officers, directors, partners or owners of a controlling interest of the entity seeking licensure
- Loan originator license applicants

Criminal, Regulatory Action and Civil Disclosures

License applicants and their control affiliates must submit specific information with their applications, enabling the Department to determine if the business entity or any of its affiliates has committed prior violations of state or federal law that would render the entity unfit to engage in the mortgage business. As described next, this information includes permission for a criminal background check and disclosure of any civil, criminal, or regulatory actions filed against the license applicant.

Criminal Disclosures require the applicant to disclose under oath whether it or its control affiliate has:

- At any time, been charged or convicted for a felony or pled guilty or no contest to a felony
- Within the past ten years, been charged, convicted, pled guilty, or pled no contest to a misdemeanor, committed in any jurisdiction, involving financial services, fraud, the making of fraudulent or false statements, omissions, theft, forgery, bribery, perjury, counterfeiting, extortion or conspiracy
- Any pending felony or misdemeanor charges

Regulatory Action Disclosures require the applicant and its control affiliate to disclose under oath whether a regulatory agency has taken any of the following actions against it within the past ten years:

- Found the applicant involved in the making of false statements or omissions
- Found the applicant involved in the violation of financial-services regulations
Denied, revoked, or suspended a license

Applicants and any control affiliates must also make disclosure of any current regulatory action that is pending.

**Civil Judicial Disclosures** require the applicant to disclose under oath whether it has, within the past ten years, been:

- Subject to an injunction in connection with an activity related to providing financial services
- Found to have violated any laws or regulations relating to financial services
- A party to a settlement agreement, which it entered to resolve an action brought against it for alleged violation of laws and regulations relating to financial services

**Authorizations and Disclosures from Control Persons**

When a business entity applies for a license, its control persons are also required to complete MU2 forms, authorizing criminal background checks as well as investigations of their employment, educational, and business backgrounds. Providing accurate answers to the disclosures is of utmost importance. If background checks reveal that an applicant or one of its affiliates or control persons has provided false information or failed to disclose information, denial of the application is likely to occur.

The questions on the MU2 form are substantially similar to those presented on the disclosure page of the MU1 form with the exception of these differences:

**No Time Limitation:** The individual disclosures are not restricted to the ten-year time period that immediately precedes the application date for the license. Individuals are asked if they have ever been subject to particular types of criminal, civil, or regulatory actions.

**Arbitration Disclosure:** The individual disclosures require information on involvement in financial services-related arbitration proceedings.

**Termination Disclosure:** The individual disclosures require information on any discharge or resignation from an obligation following the allegation of violations of the law, violations of industry standards of conduct, or allegations of fraud, dishonesty, theft, or the wrongful taking of property.

**Ensuring Accountability**

One problem that licensing laws have sought to address is the lack of accountability that some mortgage brokers and mortgage loan originators have had for their actions and omissions. Working outside of the scope of closely regulated financial institutions, such as banks or credit unions, brokers and originators could arrange for loans with little to no supervision. Unscrupulous originators were able to make predatory or fraudulent loans in one part of the
country and move to another location before state regulators or enforcement authorities were able to locate them and hold them accountable for their actions.

One of the goals of the NMLS is to create a system for tracking mortgage professionals so that it is always possible to locate them and to hold them accountable for any actions or omissions that harm consumers who rely on their expertise during the process of acquiring a mortgage loan. The NMLS tracks mortgage loan originators by assigning a “unique identifier” to each licensed individual.

Licensing laws also ensure accountability by creating a hierarchy within a mortgage company to ensure that there are supervisors who are responsible for the actions of the employees, such as loan originators, whom they oversee. The section of this course that addresses Article 12-E of the New York Banking Laws will review the provisions of that law aimed at ensuring mortgage loan originators are properly supervised.

**Ensuring Professionalism**

Professionals distinguish themselves with knowledge that is beyond the scope of those who do not share their expertise, and they obtain this knowledge from education and experience. New York Law uses education and experience requirements to ensure licensed mortgage professionals are serving consumers as professionals. The following section discusses the experience requirements for mortgage broker and banker applicants.

**Experience Requirements (3 NYCRR §410.1(c) and §410.3(b)(3))**

Mortgage banker and mortgage broker applicants are required to demonstrate their experience to engage in the mortgage business. Mortgage banker applicants must show a minimum of five years verifiable experience in making residential mortgage loans or similar lending or credit evaluation experience. Alternately, they must provide proof that they have employed or will employ at least one person with this level of experience.

Mortgage broker applicants must have a minimum of two years experience in credit analysis or underwriting experience with an exempt organization, mortgage banker, mortgage broker or licensed lender. Mortgage broker applicants must attach to their application a verified statement indicating the following:

- The specific duties and responsibilities of their employment
- The term of their employment
- The name, address and telephone number of a business reference or a current or former supervisor

Broker applicants relying on business experience or education experience must demonstrate that their experience or education qualifies them to be a registered mortgage broker. If a mortgage broker applicant relies on business experience, he/she must attach a verified statement to their application stating the same information outlined above. If the applicant is relying on its educational background, the applicant is required to provide the specific courses taken and dates
of completion. Licensed real estate brokers in good standing with the Secretary of State and attorneys are not required to demonstrate their experience to engage in the mortgage brokerage business.

Applicants must also designate a person to serve as a Qualified Person in charge of mortgage origination activities. Mortgage brokers must appoint someone with two years verifiable experience in the business of credit analysis or underwriting of residential mortgage loans or similar mortgage experience. Mortgage banker applicants must appoint a Qualified Person with five years experience in making or underwriting residential mortgage loans.

**Requirements for Principal and Branch Offices**

A mortgage broker or mortgage banker may apply to open and maintain one or more full service branches or loan solicitation branches. Amendments to Part 38 of the Banking Board Regulations eliminated the distinction between full service and loan solicitation branches. The term “branch office” now means, “any location, separate from the head office, at which loan solicitation and/or loan processing takes place irrespective of whether the only contact with an applicant from that location is by internet, telephone, facsimile or other electronic process.” 6 A branch manager is the individual who is in charge of the operations of one or more branch locations irrespective of the title given to that individual. Applicants for a branch office must include a copy of the lease for the office, the branch manager’s compensation contract, a net branch certification, and a dual agency affidavit.

Each branch must have a branch manager, and the branch manager must submit a Form MU4 to engage in loan origination activities before becoming branch manager. Unless the Superintendent denies the application within 30 days of publication of notice of receipt of a completed application, the licensee will be permitted to open a branch office. (NYSBD §410.5(b))

Applications for branch offices must be accompanied by a $500 fee, which includes processing.

Annual fees are due on or before December 15th.

**Net Branching (3 NYCRR §38.1(u) and §38.11)**

Amendments to Part 38 prohibit net branching. Net branching occurs when the branch manager incurs or assumes liability to a third party other than in the licensee or registrant’s name (except for credit reports, appraisals or office supplies) or makes payment on behalf of the licensee or registrant to the third party. Net branching can also occur when the branch manager incurs or assumes liability to a third party other than in the licensee or registrant’s name by executing the lease for the branch premises.

Part 38 defines a “net branch” as any location for which the branch manager assumes a combination, but not necessarily all, of the following indications of ownership:

- Sharing in profits and/or losses of such location

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6 http://www.banking.state.ny.us/legal/ar38tx.htm
- Controlling a corporate checkbook
- Exercising control of personnel through the power to hire or fire individuals

**Grounds for Denying Applications (12-D §592(2))**

The Department has authority to deny an initial or a renewal application for a license as a mortgage banker or mortgage broker for any of the following reasons:

- The applicant or its members lack the financial responsibility, experience, character, and general fitness to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently.

- The applicant, or any person who is a director, executive officer, partner, or principal of the applicant, has, in any jurisdiction, been convicted of or pled guilty to a felony or an offense that involves larceny, forgery, false statements, fraud, bribery, perjury or money laundering.

- The applicant, or any person who is a director, executive officer, partner, or principal of the applicant, has, in any jurisdiction, had a mortgage lending license or registration denied, revoked, or suspended.

- The applicant has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked.

- The applicant has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the Superintendent where the person has been found by the Superintendent to bear responsibility in connection with the revocation.

**License Maintenance**

After they are issued, licenses expire annually. In order to maintain a license, it is necessary to renew it annually and to meet notification, reporting, and recordkeeping requirements. There are also a number of prohibited practices that licensees and their employees must avoid in order to conduct mortgage lending activities in full compliance with the law. The procedure for renewing licenses and the requirements for complying with New York statutes and regulations are discussed next.

**Notification Requirements**

Licensees have a duty to maintain current information with the New York Banking Department and the NMLS, and they must meet the following deadlines when providing notice of particular events:

**Address change:** Address changes and supplemental documents for branch offices must be submitted to the Department 15 days prior to the effective date of the change. (NMLS website-Applicant Checklist)
Branch office supporting documentation: Licensees must submit the supporting branch documentation to the Department through the NMLS within five business days of the submission of a branch application. (NMLS website- Applicant Checklist)

Changes in officers and directors: Any change to officers, partners or directors or the three most senior executive officers must be submitted to the Superintendent with the name, address, and occupation of each new officer, partner or director within ten days of the change. (3 NYCRR §410.6(b))

Administrative, civil or criminal proceeding notifications: Mortgage bankers, mortgage brokers and exempt organizations must notify the Department in writing of any administrative, civil or criminal proceeding initiated by any domestic governmental department or agency, Fannie Mae, or Freddie Mac, within 20 days of its commencement. (3 NYCRR §38.10)

Employment: An undertaking of accountability for each independent contractor/consultant must be filed with the Superintendent by the employer within ten days of commencement of employment. In addition, notification of the termination of any independent contractor must be made to the Superintendent within ten days of the termination. (3 NYCRR §38.7(b)(2))

Third party audit reports: Within ten days of receipt, each mortgage banker must provide the Department with a certified copy of any report of an audit of the mortgage banker and/or its affiliates by any lender extending a line of credit to the mortgage banker. (3 NYCRR §410.7(p))

Fannie Mae or Freddie Mac certified lenders: Within ten days of receipt, mortgage bankers who are Fannie Mae and Freddie Mac lenders must provide the Department with:

- Copies of any and all financial reporting on Fannie Mae and Freddie Mac forms
- A copy of any audit letter issued on behalf of the mortgage banker in conjunction with the Uniform Single Audit Program for Mortgage Bankers and evidence of current certification by Fannie Mae and Freddie Mac
- Copies of any and all notices received from Fannie Mae and Freddie Mac regarding withdrawal of certification

(3 NYCRR §410.7(o))

Bond adjustments: Adjustments to bond applications must be made within 30 days after filing the VOOR. (3 NYCRR §410.8(a))

Quarterly reports: Within 45 days of the end of each fiscal quarter, licensees must submit an unaudited financial statement. (3 NYCRR §410.7(m))

Renewing Licenses

New York Law requires the annual renewal of mortgage broker, banker, and loan originator licenses. Licenses expire on December 31st of each year. Licensees must submit renewal authorization applications and nonrefundable renewal fees to the NMLS.
The annual fees to be paid each year for bankers and brokers are:

- Mortgage bankers: **$500**
- Mortgage brokers: **$250**

(Supervisory Procedure G1, Schedule of Addresses and Fees §1.2)

Additionally, mortgage loan originators are subject to a registration renewal fee of $50. (NMLS Renewal Fees Chart)

In order to renew a license, all licensees and registrants must continue to meet the requirements for initial license issuance and pay the annual fees.

**Recordkeeping (12-D §597 and 3 NYCRR §410.7)**

Licensees and exempt organizations are required to keep and maintain their business records in a manner that allow the Superintendent to determine if they are complying with New York laws and regulations. Licensees must preserve books and records (or comparable copies) for at least three years. The records must be made available to the Superintendent upon request. Mortgage bankers must employ an in-house Compliance Officer. The Compliance Officer is responsible for ensuring that the mortgage banker operates its mortgage banking business in accordance with all applicable federal and state laws and regulations.

Licensees are required to file an annual report, under the penalties of perjury, with the Superintendent providing information on the business operations during the preceding calendar year. The Superintendent may also require additional regular or special reports from a licensee. The Superintendent may require loan servicers to file annual reports or other regular or special reports, including reports with respect to mortgage delinquencies and foreclosures.

Mortgage bankers and mortgage brokers must establish and maintain the following documents and records:

- Rejected mortgage application files that contain all documentation relating to the applications – a list of rejected files should be kept, and the files must be available upon request
- A separate file for written consumer complaints
- A correspondence folder to contain correspondence to and from the Banking Department

NYCRR §410.7(a)(1)-(3))

Mortgage bankers and brokers must also retain a centralized application log for the principal office and all branch offices, updated daily, based on the date of receipt of each application, containing the following information:

- Date application received
- Name and address of applicant
- File number assigned
- Address of property
- Source of application, including the name/address/description of the person making the referral if the source was a referral
- All other fees collected and/or disbursed prior to closing, including the amount of the fee, date it was paid, purpose of the fee and the name/address/description of the person to whom the fee was paid or from whom it was received
- Final disposition of the application, including the entity with whom the loan was placed and the amount of fees received for mortgage brokerage services from the applicant as well as all other sources (must be listed separately for each source)

NYCRR §410.7(a)(4))

Branch offices are required to report their daily activity to the main office within five days. The regulation specifies that this must occur “…on a daily basis not later than noon of the fifth business day after the activity takes place.” (3 NYCRR §410.7(a)(5))

Mortgage bankers are required to maintain a general ledger which must be posted monthly. The ledger must include all assets, liabilities, capital, income and expenses, and contingencies. Financial statements must be prepared quarterly, and these must be available for inspection by the Department. Audited financial statements must be filed annually with the Department within 90 days of the close of the fiscal year. (3 NYCRR §410.7(e))

The following is a list of the remaining documents to be maintained by mortgage bankers:
- Annual reports
- Loan files relating to credit, underwriting and pricing decisions
- Documentation relating to pricing and credit, including lending policies and procedures concerning overages
- Other documents relating to pricing and credit not required by federal regulations. These documents include lending policies and procedures pertaining to pricing and credit, pricing matrices, and credit grades.
- Documents relating to loans where a commitment was issued but not yet closed or funded
- Loans subject to a lock-in agreement
- Lines of credit
- Closing agents’ names and addresses

(3 NYCRR §410.7(g))

Mortgage bankers must also file an unaudited financial statement within 45 days of the close of each fiscal quarter. (3 NYCRR §410.7(m))
If a mortgage banker is a Fannie Mae or Freddie Mac certified lender, the lender is required to provide the Department with copies of financial reporting, audit letters and copies of notices the mortgage banker received from Fannie Mae or Freddie Mac. (3 NYCRR §410.7(o))

**Prohibited Practices (3 NYCRR §38.7)**

Under New York law, mortgage brokers, mortgage bankers and exempt organizations are prohibited from conducting business in a certain manner, as outlined below.

**Financial Prohibitions:** There are a fair number of prohibitions relating to borrower and licensee financial dealings. Licensees are prohibited from the following actions regarding money or financial matters:

- Failing to disclose additional settlement costs or items necessary to close a loan in a reasonable and timely manner
- Disbursing mortgage loan proceeds in any form other than, as applicable, direct deposit to a customer’s account, wire, bank or certified check, or attorney’s check drawn on a trust account
- Failing to disburse funds in accordance with a commitment to make a mortgage loan
- Accepting any fees at closing which were not previously disclosed
- Accepting attorney’s fees at closing in excess of the fees that have been or will be remitted to its attorneys
- Imposing a charge on a mortgagor for establishing or maintaining an escrow account or for waiving the establishment or maintenance of an escrow account
- Accepting a good faith deposit or any other deposit to induce the lender to process the loan, whether or not the deposit is refundable
- Failing to comply with regulations restricting application fees to one per loan transaction

**Administrative Prohibitions:** The law contains prohibitions concerning business and administrative activities. Licensees are prohibited from:

- Conducting business with an entity which it knows or should know is an unregistered mortgage broker or an unlicensed mortgage banker
- Failing to display a copy of a license or a certificate of registration. Licenses and certificates must be prominently displayed in every public business office frequented by mortgage loan applicants.
- Refusing to permit the borrower to be represented by the attorney of his/her choice

**Prohibitions Against Fraud:** Licensees are prohibited from engaging in practices involving fraud in mortgage loans. Specifically, licensees are prohibited from misrepresenting or concealing material loan terms, or making false promises to induce an applicant to apply for a mortgage loan. A material term is any item required to be disclosed which is likely to influence, persuade or induce an applicant for a mortgage loan to take particular action.
Prohibitions Involving Mortgage Documents: The actions of licensees pertaining to loan documents and disclosures regarding mortgage loans are also regulated by New York Law. Licensees are prohibited from the following:

- Failing to make good faith efforts to issue commitments and effect closing in a timely manner
- Failing to provide any of the disclosures in the manner and at the times required by New York Banking Law
- Unreasonably refusing to issue or unreasonably delay the issuance of a satisfaction of mortgage after the mortgage has been fully satisfied
- Including any provision in the mortgage brokerage agreement that is intended to limit or prevent a consumer from submitting an application to obtain a mortgage loan through another mortgage broker or mortgage banker

High-Cost Loan Thresholds (3 NYCRR §41.1)

New York Banking Law regulates terms and conditions pertaining to high-cost mortgage loans. A high-cost home loan is a residential mortgage loan where the principal amount of the loan does not exceed the lesser of:

- The conforming loan size limit for a comparable dwelling as established by Freddie Mac
- $300,000

Additionally, to qualify as a high-cost home loan, the borrower has to be a natural person securing the loan for his or her primary residence in New York. Most importantly, to be a high-cost loan, one of the loan terms must exceed one or more of the following thresholds:

- The APR on the loan will exceed the yield on comparable Treasury securities by more than eight percentage points, for first liens
- The APR on the loan will exceed the yield on comparable Treasury securities by more than nine percentage points, for junior liens
- The total points and fees payable exceed 5% of the total loan amount if the loan amount is $50,000 or more, or 6% if the total loan amount is $50,000 or more and the loan is a purchase money loan guaranteed by the Federal Housing Administration or the U.S. Department of Veterans’ Administration
- The total points and fees exceed the greater of 6% of the total loan amount or $1,500, if the amount is less than $50,000

Limitations, Prohibitions and Deceptive Practices for High-Cost Loans

High-cost loans are subject to the following limitations:

- No call provision
- No balloon payment provision
- No negative amortization
- No increased interest rate
- No oppressive mandatory arbitration clauses
- No advance payments

(3 NYCRR §41.2)

Below is a list of prohibited acts in making a high-cost loan:

- No lending without providing a counseling disclosure and list of counselors. The disclosure should appear in 12-point type and read “You should consider financial counseling prior to executing loan documents. The enclosed list of counselors is provided by the New York State Banking Department.”
- No lending without due regard to repayment ability – the ability to repay the loan can be presumed if the borrower’s monthly payments do not exceed 50% of the borrower’s monthly gross income.
- A lender may not require a borrower to finance any portion of the points and/or fees in an amount that exceeds 3% of the principal amount of a closed end high-cost home loan or of the maximum line of credit amount for open end high-cost home loans.
- A lender cannot charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the lender or an affiliate of the lender.
- A lender cannot charge points and fees on the refinance of an existing high-cost home loan if the last transaction was within the past two years. This prohibition is aimed at preventing loan flipping, which is the practice of refinancing a loan in order to charge points and fees without a net tangible benefit to the borrower.
- A lender cannot charge fees to modify, renew, extend or amend a high-cost home loan, or defer payments, if the loan is still a high-cost loan after the changes. If the changes result in the loan no longer being a high-cost loan, the lender cannot charge fees if the APR has not been reduced by at least two percentage points. This prohibition is also aimed at preventing loan flipping and ensuring a net tangible benefit to the borrower.
- A lender may not directly pay a contractor under a home improvement contract from the proceeds of a high-cost home loan.
- No refinancing of special mortgages. Special mortgages are low- or no-cost mortgages originated, subsidized or guaranteed by a government entity or non-profit organization.

(3 NYCRR §41.3)

In addition to the prohibited practices, Part 41 of the Banking Regulations includes a list of acts that constitute unfair and deceptive practices. The regulations state that these practices are considered evidence that a lender does not possess the necessary character and fitness to be licensed by the New York State Banking Department. In addition to making/brokering loans that violate Part 41 of the Banking Regulations, the regulations consider the following to be unfair,
deceptive or unconscionable practices with regard to advertising, brokering or making high-cost loans:

- Charging fees that are excessive or otherwise unconscionable
- Retaining fees for services which are not actually performed or which are unrelated to services actually performed
- Making/brokering loans in which the repayment terms exceed the borrower’s repayment ability to such a degree that the loan is unconscionable
- Loan flipping
- Packing a loan with charges for credit insurance products or other unrelated goods and services without the borrower’s informed consent (informed consent means a disclosure written in 12-point type is provided no less than ten business days of closing)
- Recommending or encouraging default on an existing debt in connection with the proposed loan transaction
- Advertising that refinancing a high-cost home loan reduces aggregate monthly debt without also disclosing that the number of payments and total amount paid over the life of the loan will increase

(3 NYCRR §41.5)

**Loan Flipping (3 NYCRR §41.5(4))**

The regulations state that loan flipping occurs when a high-cost loan is used to refinance an existing loan without a tangible net benefit to the borrower, “considering all the circumstances of the refinancing.”

Tangible net benefit is defined as receipt of a monetary benefit by the borrower, including:

- Receipt of additional proceeds
- Reduction of the outstanding mortgage debt
- Lowering the APR
- Lowering the monthly principal and interest payment

It is important to note that if monthly principal and interest payments and/or the total debt increases, there must be a commensurate monetary benefit to the borrower. (3 NYCRR §41.5)

**Additional Requirements Under the High-Cost Home Loan Regulations**

In addition to refraining from the prohibited practices and meeting disclosure requirements, the following requirements also apply to making high-cost home loans in New York. More information on disclosure requirements is found under a subsequent section of this course. (3 NYCRR §41.4)
Discussion Scenario: The Case of Mortgage Fraud

In early 2010, the New York Department of Banking responded to consumer complaints and launched an investigation of a company called Frankfurt & Goldenrod Financial. The Department of Banking determined that Frankfurt & Goldenrod was posing as a mortgage company for the purposes of identity theft. The company’s website advertised easy money and instant loan approval for consumers with damaged credit. The website also featured an online application where New York consumers were asked to provide personal information, social security numbers and financial account numbers. Following complaints, the regulator quickly ascertained that the company was not licensed under the Article 12-D.

Along with the allegations of identity theft, a spokesperson for the Department of Banking reported that the company was soliciting advance fees for services and then providing nothing in return. For instance, one consumer reported being offered a 15-year loan of $25,000 but was required to wire a deposit of $2,100 for the first ten months’ payments and an additional $2,100 for the purposes of “mortgage insurance.” The consumer was then told the loan approval had fallen through, and the funds would be returned to his bank account within a month – something that never occurred.

The investigation continues, but it is likely a number of New York consumers were victimized. The Department of Banking has since issued a cease and desist order against the company and has referred the case to the Attorney General for further investigation and criminal prosecution. The Department of Banking spokesperson indicated that the FBI Mortgage Fraud Unit has also been alerted to the proceedings.

Discussion Questions

- In addition to failing to become licensed under New York licensing law while representing to the public that it was a mortgage company, what other state (and federal laws) did Frankfurt & Goldenrod violate?

- What kind of impact do cases like this have on mortgage professionals who are operating legitimately?

- How would you handle a client who has heard about situations like this in the news? What steps would you take to educate them and ease their concerns?

Discussion Feedback

The company’s business practices in general appear to be a front for fraud and other criminal activities. Questionable acceptance of advance fees, lack of disclosure and other predatory practices are clear violations of federal fraud laws, federal mortgage laws such as the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and local and federal consumer protection laws.

Companies that commit fraudulent acts put a black mark on the mortgage industry. By decreasing the public’s trust, they make it more difficult for companies and individuals who are operating ethically to conduct business. A customer who has a negative opinion of the industry
based on incidents like this may need reassurance and increased communication during the course of their loan transaction.

Careful explanation of the origination process and proof that the mortgage professional is operating in compliance with the law would be necessary to ease the customer’s fears. Applying sound and consistent business practices and good communication to all customer transactions raises the bar and increases consumer trust in the industry.

**Required Conduct (12-D §590-b)**

Mortgage brokers and bankers have certain responsibilities toward consumers, applicants and borrowers. While conducting mortgage business in New York, licensees are required to act in the borrower’s interest and conduct business with reasonable skill, care and diligence. New York Law imposes a good faith and fair dealing requirement upon licensees as well.

Mortgage licensees must clearly protect the borrower’s rights by disclosing, within three days after receipt of the loan application, all material information that might reasonably affect the rights, interests, or ability to receive the borrower’s intended benefit from the home loan. All licensees must work diligently to present the borrower with a range of loan products appropriate to the borrower’s circumstances. Licensees can only accept compensation for charges that were previously disclosed to the borrower, even if the charge is an expense for the borrower.

Real estate appraisals are an important step in the mortgage lending process. Lenders or brokers may be tempted to influence a real estate appraisal in order to secure a higher (or lower) appraisal for a property. However, New York law requires that lenders and brokers do not insert themselves into the process in a way that would influence the review, report or result of an appraisal.

The law does not prevent a mortgage professional from doing any of the following:

- Asking an appraiser to consider additional information about a borrower’s principal dwelling or about comparable properties
- Requesting that an appraiser provide additional information about the basis for a valuation
- Requesting that an appraiser correct factual errors in a valuation
- Obtaining multiple appraisals of a borrower’s principal dwelling
- Withholding compensation from an appraiser for breach of contract or substandard performance of services
- Terminating a relationship with an appraiser for violations of applicable state or federal law or breaches of ethical or professional standards
- Taking action permitted or required by applicable state or federal statute, regulation, or agency guidance
Brokers that violate provisions of the law pertaining to improper influence of an appraiser may be responsible to the borrower for actual damages. The borrower may also receive injunctive, declaratory or equitable relief and attorneys’ fees for violations.

**Change in Control (12-D §594-b)**

Licensees must perform certain steps when the mortgage business experiences a change in control. Under New York Law, “control” is defined as:

*The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee or registrant, whether through the ownership of voting stock of such licensee or registrant, the ownership of voting stock of any person which possesses such power or otherwise.*

If a person owns, controls, or holds 10% or more of the voting stock of any licensee, he/she is deemed to have “control.” However, a person does not have “control” simply by being a director or officer of a licensee.

Licensees must obtain approval of the Superintendent before taking any action that would result in change of control of the business. Before the change in control, the licensee or business must submit an application and investigation fee to the Superintendent. The application must contain the same information required for an initial mortgage banker’s license. Using the same standards of evaluation for an initial mortgage banker’s license, the Superintendent will make a decision regarding the change within 90 days after receipt of the application.

**Fees and Charges (3 NYCRR §38.1(c), §38.3, §38.4, §38.6)**

New York imposes restrictions on the types of fees and charges mortgage brokers may charge borrowers. Many of the fees are discussed throughout this course and cover such topics as application fees, commitment fees, lock-in fees, premium pricing fees and fees associated with high-cost loans.

If a mortgage broker obtains a mortgage loan for a borrower, the broker is entitled to receive a broker fee. The fee must be agreed to by the borrower, and brokers may not receive this fee unless they disclose it to the borrower. The broker’s fee may be paid by the consumer or the lender, and the broker fee disclosure must detail who makes the payment. Brokers may not accept a fee from the lender in excess of the broker fee disclosed to the borrower. In the event the fee from the lender exceeds the amount disclosed to the borrower, the excess must be refunded or applied to a subsequent class of transactions.

It is important to note that a broker’s fee may not be designated on the HUD-1 as a “loan originator fee.” The loan origination fee represents the lender’s administrative costs in processing the loan and is a fee paid to the mortgage lender and not the mortgage broker. Other fees the broker is entitled to collect include:

- An application fee
- An application processing fee
- A property appraisal fee
- A credit report fee

**Mortgage Recording Tax (11 §251)**

Article 11, Section 251 of New York’s Tax Law requires a mortgage tax that is due at the time of recording a mortgage or any other transaction that increases indebtedness secured by an existing mortgage. Generally, the mortgage recording tax is $.50 for each $100 of principal debt. New York imposes additional taxes considering a number of factors such as the type of property, whether the lender is a natural person, and the taxable property values. For example, there is an additional mortgage recording tax of $0.25 for each $100 for mortgages recorded in counties outside of the metropolitan commuter transportation district (MCTD) and $0.30 for counties within the metropolitan commuter transportation district. Counties within the MCTD include: New York City, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties.  

The first $10,000 of a mortgage is exempt from the mortgage tax.

The majority of the mortgage recording tax is payable by the borrower. However, unless a lender qualifies for an exemption, in most cases a 0.25% portion, referred to as the “special additional tax,” is payable by the lender. Charitable entities, governmental entities and affiliates and housing fund development companies are exempt from paying the mortgage tax.

**Disclosures and Agreements (12-D §595-a(3) and 3 NYCRR§38.3, §38.4)**

Article 12-D and Part 38 of the Banking Board Regulations contain provisions governing disclosures and procedures to be followed at the time a licensee takes an application for a mortgage loan. An application may be taken in writing, over the telephone, or electronically transmitted. A written application must contain the following statement: “It is a crime to intentionally falsify information on this application.” (3 NYCRR §38.3)

The required disclosures must be made prior to taking an application or application fee, credit report fee or appraisal fee. (3 NYCRR §38.3(a)(1)) Some or all of the disclosures discussed in this section may appear on required state and federal forms. Licensees have the option to use the state and federal forms or provide separate forms to applicants. Every registrant must familiarize itself and its employees with the qualifications necessary to fulfill lenders’ requirements for the loan products and programs available through that mortgage broker.

Prior to accepting fees, mortgage brokers must disclose the following information:

- That the mortgage broker may not make mortgage loans or commitments
- That the mortgage broker cannot guarantee acceptance into any particular loan program, or promise any specific loan terms or conditions

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7 [http://www.tax.state.ny.us/pdf/memos/mortgage/m05_4r.pdf](http://www.tax.state.ny.us/pdf/memos/mortgage/m05_4r.pdf)
- Whether the mortgage broker places loans primarily with any three or fewer lenders and the names of the lenders
- A statement explaining the rate, points, fees, and other terms quoted at commitment which encompass the consideration to be received by the mortgage broker and the specific maximum amount of the consideration to be received
- The amount of the application fee, a good faith estimate of the credit report fee, property appraisal fee, processing fee, if any, and the terms and conditions for obtaining a refund of the fees
- The specific services which will be provided or performed for the application fee and/or the processing fee
- The maximum points, including premium pricing, payable by the lender to the mortgage broker and any fees or points to be paid by the applicant directly to the mortgage broker
- The maximum consideration, including premium pricing, fees and points, payable by the lender to the mortgage broker, the maximum of any fees or points to be paid by the applicant directly to the mortgage broker, and the combined total consideration
- Certain mortgage loan products impose a prepayment penalty on the borrower and the amount of, or the formula for calculating, the prepayment penalty. Terms of the prepayment penalty must be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment for the loan product.

(3 NYCRR §38.3(a)(1)(i-vii)

**Additional Disclosures (3 NYCRR §38.3(a)(1)(viii-xii)**

The following disclosures might not apply to all applications, but if applicable, the following disclosures must also be made:

- Any premiums or bonuses to be paid to the mortgage broker by the lender and/or the basis of its eligibility to receive premiums or bonuses
- A description of the consumer protections and lender disclosures which are lost when the loan is placed with a private investor
- The fact that fees are being divided between more than one licensee and the dollar amount or the percentage, or if not known, a good faith estimate of the fee to be received by each licensee
- A toll free telephone number of a person in a management position with the mortgage broker who may be contacted about problems with the application. Electronic applications must have the electronic mail address of the mortgage broker.

**Required Procedures – Mortgage Brokers (3 NYCRR §38.3(a)(2))**

There are some application procedures specific to New York mortgage broker licensees. As a benefit to consumers, brokers are required to separate the application fee and processing fees from other fees. By designating each fee as a separate entry on the application, consumers can obtain a more complete and accurate itemization of fees. The application and processing fees
must be reasonably related to the services performed by the broker. The application or processing fees may not be based upon a percentage of the principal amount of the loan or the amount financed. Additionally, all written applications must be signed by an employee of the mortgage broker, and every electronic form is required to include the email address of the mortgage broker.

Mortgage brokers are prohibited from taking a fee in connection with a mortgage loan other than an application fee, credit report fee and property appraisal fee prior to the applicant’s acceptance of a commitment from a qualified lender. The New York Banking Board also prohibits mortgage brokers from taking any fee prior to closing when the commitment from the lender is subject to any of the following:

- Adequate appraisal value
- Satisfactory credit history and obligations
- Pre-sale requirement clause in a condominium or co-op mortgage commitment

(3 NYCRR §38.3(a)(2)(iv)(a-c))

However, a mortgage broker may accept a lock-in fee for transmittal to a mortgage banker or exempt organization subject to certain restrictions. Any amount collected from an applicant in excess of the actual cost of the credit report fee and property appraisal fee must be returned at or prior to closing. All disclosures relating to monetary refund must be conspicuously printed on the disclosure form. (3 NYCRR §38.3(a)(2)(iv), (v), (vii))

A signed duplicate of a written application must be provided to the applicant within seven business days. If the application was submitted electronically, the broker must provide the customer with a hard copy within seven business days only if the applicant cannot download and print the application. Fee agreements made with the applicant must be forwarded to the lender. (3 NYCRR §38.3(a)(2)(ix))

There are certain disclosures that a broker must make prior to accepting an application. All copies of pre-application disclosures must be signed by the applicant and maintained by the broker. Electronic pre-application disclosures must be digitally signed through the use of a “required confirm button.” Hard copies must be sent to the applicant within three business days of electronic receipt. All mailed application packages must include the pre-application disclosures and a stamped self-addressed envelope with a request that a signed copy of these disclosures be returned to the mortgage broker. (3 NYCRR §38.3(a)(2)(xii))

Application Disclosures – Mortgage Banker and Exempt Organizations (3 NYCRR §38.3(b))

Mortgage bankers fulfill a different role than mortgage brokers in the lending process. As a result, there are different disclosures and procedure for bankers (and applicable exempt organizations). The next section outlines the requirements New York law places on bankers and some exempt organizations.
When loan proceeds include a commitment fee, or points are paid or will be paid to the lender prior to closing, the mortgage banker is required to disclose the following information before taking an application, application fee, credit report fee or property appraisal fee:

- The amount of the application fee and a good faith estimate of the credit report fee, property appraisal fee, the processing fee, if any, and the terms and conditions, and the terms under which such fees may be refundable
- In those instances in which the lender routinely assigns the commitments it has issued in its own name to a third party or parties, the lender must disclose the amount of any fee the lender will pay or receive from the third party and the service to be performed by such third party or parties. The lender must also provide the name and address of the third party.
- The fact that certain mortgage loan products impose a prepayment penalty on the borrower and the amount of, or formula for calculating, the prepayment penalty. The terms of the prepayment penalty must be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment for the loan product chosen by the borrower.
- The toll free telephone number of a person in a management position who may be contacted about problems with the application. If there is no toll free telephone number, then the circumstances under which a collect call will be accepted. Electronic applications must disclosure the electronic mail address of the mortgage banker or exempt organization.

(3 NYCRR §38.3(b)(1)(i-iv))

If the lender charges discount points, the banker must include the following statement in the application disclosures:

Discount points should lower the interest rate paid on the loan but may not lower the overall cost of the loan. If you refinance or pay off your loan quickly, you will lose the benefit of any lower interest rate provided by the discount points. Furthermore, if you finance the discount points, this will increase the amount of money that you must repay to the lender and you will have to pay interest on the discount points as part of the amount you have borrowed.

(3 NYCRR §38.3(b)(1)(v))

**Required Procedures for Mortgage Bankers (and Exempt Organizations) (3 NYCRR §38.3(2))**

Application fees and processing fees must be reasonably related to the mortgage banker’s services. The fees may not be based upon a percentage of the principal amount of the loan or the amount financed. Any fees collected in excess of the actual cost of the credit report fee and the property appraisal fee must be returned at or prior to closing. All disclosures concerning refunds must be conspicuously printed on the documents. All written applications must be signed by the employee taking the application, and all electronic application forms used by a mortgage banker
or exempt organization must include the e-mail address of the mortgage banker or exempt organization.

Mortgage bankers are required to provide the applicant with a signed duplicate of the application within seven business days from the time of receipt. For electronic applications, signed hard copies must be provided if the customer cannot download a copy of the application.

Written pre-application disclosures must be kept by the licensee. All mailed application packages must include the pre-application disclosures and a stamped self-addressed envelope with a request that a signed copy of the disclosures be returned to the mortgage banker or exempt organization. The mortgage banker or exempt organization must keep a copy of this request.

A licensee may not accept an electronic application unless the applicant either digitally signs the document or the licensee receives electronic receipt of the pre-application disclosures through the use of a “required confirm button.” If a licensee receives the pre-application disclosures electronically, he or she is required to send a hard copy within three business days to the applicant.

**Commitment Disclosures (3 NYCRR §38.4)**
Mortgage loans having commitment fees or points paid to the lender require specific disclosures. At the time of commitment, and in any case prior to the acceptance of a commitment fee or any points, each mortgage banker and exempt organization making a mortgage loan must disclose in writing or by electronic transmission the fees to be paid in connection with the commitment and the terms and conditions under which the fees may be refundable.

Additionally, mortgage bankers and exempt organizations must also disclose the items listed below in the written or electronically transmitted commitment concerning the terms and conditions of the mortgage loan:

- Identification of entity making the commitment
- Identification of borrower(s)
- Identification of property securing loan
- Principal amount of the loan
- Term of the loan
- Initial interest rate
- Initial monthly payment of principal and interest
- A statement that a balloon payment will be required (if applicable)
- Identification of whether the loan is an adjustable-rate loan
- A statement that private mortgage insurance will be required (if applicable) and the conditions under which it would no longer be required
- Statement that flood insurance may be required if the property is in a flood zone
- A statement that negative amortization may apply (if applicable)
• Whether, and under what conditions, the mortgage is assumable
• A statement that funds are to be escrowed (if applicable)
• Total points to be accepted directly or indirectly by, or on behalf of, the mortgage banker
  or exempt organization at or prior to closing
• If applicable, the amount of, or formula for calculating, the prepayment penalty and terms
  of the prepayment penalty

(3 NYCRR §38.4(a)(1)(i-xviii))

Licensees are required to separately identify the points, including premium pricing, payable by
the lender to a mortgage broker, mortgage banker or exempt organization when acting in a
mortgage brokerage capacity and briefly explain the basis for the premium pricing payment.
They must also separately identify any premiums or bonuses to be paid to the mortgage broker
by the lender and the basis of the mortgage broker’s eligibility to receive premiums or bonuses.

Mortgage bankers and exempt organizations must also disclose the items listed below in the
written or electronically transmitted commitment concerning the terms and conditions of the
commitment:

• Time during which the commitment is irrevocable and may be accepted by the borrower.
  This time may not be less than seven calendar days from the date of commitment or date
  of mailing.
• Amount of fees and charges payable at time of commitment including points or other
discounts, origination fees or add-ons
• Expiration date of the commitment. The date must be a reasonable time for a consumer to
  arrange for a closing date.

(3 NYCRR §38.4(a)(2)(i-iii))

Commitments must have the following mandatory disclaimer:

IF YOU SIGN THIS COMMITMENT, AND YOU DO NOT CLOSE THIS
LOAN IN ACCORDANCE WITH THE DESCRIBED TERMS, YOU MAY
LOSE SOME OR ALL OF THE FEES OR CHARGES YOU HAVE PAID.

(3 NYCRR §38.4(a)(3))

Mortgage bankers must provide a list of foreseeable conditions and documents that will be
required for the closing of a mortgage loan. Additionally they must provide a list of those items
relating to the real property which must be produced prior to closing, including, but not limited
to, the following items (if applicable):

• Title report and insurance
• Property survey
• Copy of certificate of occupancy for use
• Satisfactory final inspection (if new construction)
- Evidence of appropriate hazard and flood insurance
- Master policy insurance certificate (if applicable in the case of condominiums)
- Termite inspection report
- Radon test report
- Well water test report and septic inspection report

(3 NYCRR §38.4(a)(4)(i)(a-k))

There is also another list of required closing disclosures for cooperative housing units that may be found in Title 38 of the Banking Board’s Regulations.

**Procedures for Mortgage Loans with Commitment Fees or Points (3 NYCRR §38.4(c))**

All commitments must be provided to applicants in either written or electronic format. Commitments must be signed by the mortgage banker, exempt organization and the applicant. As in the case with disclosures, applicants must receive a hard copy of the written commitment. A hard copy of an electronic commitment must be mailed within three business days to the applicant, and licensees are required to keep copies of the signed commitments. Commitments cannot contain a clause which conditions the commitment on the mortgage banker or exempt organization obtaining necessary funding or financing.

If a licensee fails to make a disclosure regarding points, the mortgage banker may not condition the closing of the loan on points. Any additional settlement costs required to close the loan after the commitment has been issued must be disclosed in writing or electronically transmitted to the applicant in a reasonable and timely manner.

All commitment fees must be refundable in full if the property appraisal report is not favorable for the product for which the commitment was issued. A commitment fee and any points taken prior to closing must be refunded in full if an applicant who has provided complete and correct credit information is rejected as not creditworthy.

**Notice of Expiration (3 NYCRR §38.4(d))**

The notice of expiration of the commitment must be provided as a separate document and must be mailed or electronically transmitted to individual applicants 12 to 20 business days prior to the expiration of the commitment period. This notice need not be given if the expiration of the commitment period is less than 12 days from the date the commitment is accepted.

**Lock-in Agreements (Guaranteed Rate) (3 NYCRR §38.6)**

A mortgage banker or exempt organization may accept points or a lock-in fee prior to the issuance of a commitment only if they make the appropriate disclosures and notices. Prior to accepting points or a lock-in fee, a mortgage banker must provide the applicant with the following information:

- Identification of property, principal amount and term of loan, initial interest rate and points, commitment fees and lock-in fees
That the lock-in agreement will become binding on both the applicant and the mortgage banker or exempt organization when signed by both

The time by which the lock-in fee must be paid to the mortgage banker or exempt organization

Whether fixed or variable, and if a variable-rate, the index and margin, or the method, by which an interest rate change for the mortgage loan will be calculated

Balloon payment (if applicable)

Initial monthly payment of principal and interest

Whether funds are to be escrowed (if applicable)

Whether private mortgage insurance is required (if applicable) and the conditions under which it would no longer be required

(3 NYCRR §38.6(a)(1)(1-viii))

The lock-in period must be provided to the applicant as well as a notice warning the applicant that incomplete or incorrect credit information may result in forfeiture of some, or all, of the lock-in fee. Licensees are also required to notify applicants whether or not the lock-in fee is refundable and any other fee amount that has not been previously disclosed to the applicant. (3 NYCRR §38.6(a)(3-4))

Lock-in Procedures (3 NYCRR §38.6(b))

The lock-in fee is made payable by the applicant to the mortgage banker or the exempt organization which intends to make the loan. A mortgage broker may only accept a lock-in fee for transmittal to the mortgage banker or exempt organization which intends to make the loan. Lock-in agreements are binding on both parties, and signatures may be handwritten or electronic.

Copies must be provided to the applicant and must be mailed within three business days if the agreement was signed electronically. A lock-in fee including any points taken by the lender prior to commitment must be refundable in full if the property appraisal report is not favorable for the loan product locked in. Also, a lock-in fee including any points taken by the lender prior to closing must be refunded in full if an applicant who provided complete and correct credit information is rejected as not creditworthy.

Prevailing Rate (3 NYCRR §38.5)

A mortgage banker is permitted to set a prevailing rate on a mortgage loan, and that rate may be fixed or variable. Disclosures for the prevailing rate must include the same disclosures required for a commitment – excluding information concerning the initial interest rate and the initial monthly payment of principal and interest. The index and margin upon which the prevailing rate was based must be disclosed. The banker is also responsible for disclosing any points or other discounts or the base rate and the maximum interest rate at which the loan may close.

Miscellaneous Disclosures (3 NYCRR §38.9)

New York Law requires disclosures concerning excess insurance and dual agency. Mortgage bankers are prohibited from requiring lenders to obtain a hazard insurance policy in excess of the
replacement cost of the improvements on the property. If a mortgage banker requires a borrower to obtain hazard insurance as a condition of the loan, the banker must disclose that the borrower is not required to obtain an excess of insurance.

If a mortgage banker or exempt organization is also acting as a mortgage broker in a loan transaction, that information must be disclosed at the first substantive contact between the mortgage banker/broker and the borrower. This disclosure must be signed by both parties. (3 NYCRR§38.3(c)(i))

**Disclosure Under the High-Cost Home Loan Provisions (3 NYCRR §41.3)**

In addition to the disclosure pertaining to obtaining counseling described in a previous section of this course, lenders and brokers are required to provide an additional disclosure to borrowers of high-cost home loans. The disclosure is due within three days of determining that the transaction is a high-cost loan; additionally, it must be made no less than ten days prior to closing. The written disclosure must appear in 12-point type and include the following language:

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CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, which pursuant to New York State Law is a High-Cost Home Loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

You should shop around and compare loan rates and fees. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or mortgage broker you select. Higher rates and fees may be related to the individual circumstances of a particular consumer's application.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. The enclosed list of counselors is provided by the New York State Banking Department.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.
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Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors. Accordingly, it is important that you make regular payments to your existing creditors.

Additional High-Cost Home Loan Disclosure (3 NYCRR §41.4)

The high-cost home loan regulations reference disclosures required by Part 38 of the Banking Regulations, which must be provided no less than ten days prior to closing. The regulations state that the lender is ultimately responsible for making disclosures, although the lender may agree for the broker to make the disclosure.

In addition to the standard disclosures, the following statement must be included for high-cost loans, if the statement is true:

Although your aggregate monthly debt payment may decrease, the high-cost home loan may increase both (i) your aggregate number of monthly debt payments and (ii) the aggregate amount paid by you over the term of the high-cost home loan.

The following statement must also appear on the loan application directly above the borrower’s signature line (or on a separate document attached to the front of the application). It must appear in 12-point font:

The loan which may be offered to you is not necessarily the least expensive loan available to you, and you are advised to shop around to determine comparative interest rates, points and other fees and charges.

For loan applications which are made over the phone, the statement above must be disclosed to the borrower within three days of application, and no less than ten days prior to closing. If the lender/broker is not aware that a loan is a high-cost loan at the time of application, the disclosure must be made within three days of determination.

Discussion Scenario: Failure to Meet Disclosure Requirements

Disclosure requirements are an important component of conducting business in the mortgage industry. Failing to provide proper disclosures in the course of a loan transaction is a consumer protection issue and places mortgage professionals at risk for civil and criminal action. What if this risk cost you $5,000 per violation – with the possibility of up to $100,000 in fines?

There are numerous provisions under New York law requiring proper disclosure. Some disclosure requirements (such as the Good Faith Estimate of loan costs and Truth-in-Lending disclosures) are similar to federal requirements. Others are broader than federal requirements, and some are unique to New York. High-cost loan disclosures, lock-in agreements/disclosures, commitment agreements/disclosures, and disclosures due at the time of application concerning costs and fees are just a few of the disclosures required under New York Law.
To illustrate the importance of proper disclosure, consider the fate of a mortgage loan finance company which was faced with steep fines in 2010 for failure to provide disclosures to consumers. The broker, which had ceased business in 2009 and surrendered its license, became the focus of an investigation by the New York Attorney General. Through the investigation, it was discovered that nearly every loan file reviewed was missing disclosures and/or contained incomplete documents.

**Discussion Questions:**

*Why do state and federal laws mandate disclosures?*

*Based on the state requirements we have reviewed so far, what impact could the missing and incomplete documents have had on the borrowers involved?*

*What do you think could have led the finance company to fail to meet disclosure requirements on such a great scale?*

*In addition to New York Law, what are some federal laws that may have been violated?*

**Discussion Feedback**

State and federal disclosure requirements have a number of purposes. Some ensure that a consumer is advised on fees and charges (the “cost of credit”) and the terms of their loan. This allows consumers to make an educated decision before entering into a loan transaction – often the biggest investment they will make in their lives. Other disclosures advise them of their rights and their obligations as a party to the transaction. In addition to state requirements, federal mortgage-related laws include specific disclosure provisions; the Truth-in-Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA) and the Equal Credit Opportunity Act (ECOA) are just a few.

When consumers are not provided with appropriate disclosures on mortgage transactions, they may make decisions without knowing all of the facts. Poor decisions can result in debt problems, default and foreclosure, and places the lien holder’s investment in jeopardy. Failing to meet disclosure requirements on a large scale is a sign that the mortgage broker was either unaware of the disclosure obligations or was simply not committed to good business practices. Another possibility is that the broker failed to disclose in order to hide unprofessional or unethical business practices such as charging illegal fees, etc.

**Failure to Meet Disclosure Requirements: The Potential Outcome**

Following the investigation, the Attorney General filed a lawsuit against the finance company charging it with violations of the federal Real Estate Settlement Procedures Act (RESPA), Truth-in-Lending Act, Article 12-D and 3 NYCRR. The lawsuit asked the court to prohibit the company from committing further violations, require the company to make restitution to all the borrowers who had lost money due to the violations and to pay civil penalties of $5,000 per violation.
Discussion Questions:

What are some business practices a mortgage broker could put in place to ensure disclosure requirements are met?

How would you react if you were one of the borrowers harmed by the mortgage broker’s actions?

Discussion Feedback

Education and research on state and federal disclosure requirements is the first step in ensuring mortgage professionals meet their obligations. Once those obligations have been determined, it is up to the business to set up policies and procedures that ensure the requirements are met on each and every transaction. Consistency, professionalism and full disclosure give consumers confidence in the services they are provided as part of a loan transaction.

Advertising (3 NYCRR §38.2)

Mortgage brokers in New York must include the following language in their print or electronic advertisement, “Registered Mortgage Broker-NYS Banking Department.” Similarly, mortgage bankers are required to use the language, “Licensed Mortgage Banker-NYS Banking Department.” Advertising includes business cards, letterhead and general electronic media communications.

Mortgage brokers, bankers or exempt organizations must include the name of the entity and the New York address. If a licensee has more than ten offices in New York, this regulation does not apply. If the entity is not located in New York, the out-of-state address must appear on the advertisement.

Advertised products must be available to a reasonable number of qualified applicants responding to the advertisement on the date the advertisement appears, or the entity’s next business day. No advertisement by a mortgage broker can state or suggest that the broker will fund the loan. All advertisements by a mortgage broker must contain a statement to the effect that the mortgage broker arranges mortgage loans with third-party providers.

Fraud in Advertising

Licensees and exempt organizations are prohibited from fraudulently or deceitfully advertising a mortgage loan. They are also prohibited from misrepresenting the terms, conditions or charges incident to a mortgage loan in any advertisements. Below are examples of fraudulent, deceitful or misleading conduct under the Act:

- Advertisement of “immediate approval” of a loan application or “immediate closing” of a loan
- Advertisement of a “no-point” mortgage loan when points are accepted as a condition for commitment or closing, or the advertisement of an intentionally incorrect number of points
Advertisement that an applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit may exist

Advertisement of a specific time period within which a commitment will be issued unless a commitment will actually be issued to a qualified applicant within the time period specified

Advertisement of a mortgage loan where a prevailing rate is indicated in the advertisement, unless the advertisement specifically states that the expressed rate may change or not be available at commitment or closing

If a mortgage broker, banker or exempt organization advertises a mortgage loan product containing a prepayment penalty which sets forth the interest rate and/or points, the advertisement must include a statement indicating that the product has a prepayment penalty. New York Law requires that all licensees or exempt organizations maintain a record of samples of its advertisements for two years after publication.

**Loan Originators (12-E and 3 NYCRR§420)**

New York’s original Banking Law Article 12-D created a limited regulatory program that imposed licensing requirements only for entities and individuals operating as mortgage brokers. The law did not create licensing requirements for individuals who were employed by brokers as loan originators.

This type of regulatory program was common for many years, although there has been a growing trend to extend licensing requirements to all individuals who originate mortgage loans. With its adoption of the federal S.A.F.E. Act, Congress forced all states to join this trend. The federal S.A.F.E. Act authorized the Department of Housing and Urban Development (HUD) to draft a model state law for the licensing and regulation of mortgage professionals. Effective July 11, 2009, the New York Legislature made more changes to the Banking Laws, adopting the model Act and giving loan originators a deadline for the completion of licensing requirements.

Licensing requirements for mortgage loan originators serve the same purposes as the licensing requirements for mortgage brokers. The licensing process allows the state regulator to obtain information about license candidates to determine if they are ethically and financially fit and sufficiently educated to serve consumers as originators of mortgage loans.

New York Article 12-E gives licensing and rule-making authority to the Superintendent of the Banks (Superintendent). Like mortgage brokers, loan originators are required to submit their applications through the NMLS, but it is the State Banking Department that will determine if an applicant meets the licensing requirements.

**Licensed Individuals**

Effective July 11, 2009, Article 12-E of the New York Banking Law requires all individuals who engage in the business of mortgage loan originating, with respect to New York residential real
estate, to obtain a license from the Superintendent of Banks. New York Article 12-E is intended to make New York Law consistent with the federal S.A.F. E. Act.

Part 420 of the Banking Regulations defines a mortgage loan originator as, “an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.”

A mortgage loan originator does not include:

- Any individual engaged solely as a loan processor or underwriter
- An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable New York Law, unless the individual is compensated by a lender, mortgage loan broker or mortgage loan originator
- An individual solely involved in extensions of credit relating to timeshare plans

(3 NYCRR §420.3(g)(1)-(2) and 12-E §599-b(7)(b))

Article 12-E also applies to loan processors and underwriters who are independent contractors of an originating entity. Each independent contractor loan processor or underwriter must be licensed as a mortgage loan originator and maintain a valid unique identifier issued by the NMLS.

The Act defines loan processor or underwriter as follows: “An individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing…provided that such individual does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator. (3 NYCRR §420.3(e)(1) and 12-E §599-b(6)(a))

Clerical or support duties, subsequent to the receipt of an application, may include:

- The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan
- Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms

(3 NYCRR §420.3(e)(2) and 12-E §599-b(6)(b))

Exemptions (12-E §599-c(3))

There are exceptions under Article 12-E that exempt individuals from licensing as loan originators. The following persons are exempt from licensing under the Act.
Registered mortgage loan originators: Any individual who is registered with and maintains a unique identifier through the NMLS meets the definition of mortgage loan originator and is an employee of one of the following:

- A depository institution
- A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency
- An institution regulated by the Farm Credit Administration

Negotiation for family members: Any individual who offers or negotiates the terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual. An immediate family member is defined as a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings and adoptive relationships.

Property owners: Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling or residential real property that served as that individual’s own residence.

Licensed attorney: A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client. However, if the attorney is compensated by a lender, mortgage broker, or mortgage loan originator (or by an agent of any of these), he/she must be licensed.

Employees of a mortgage loan servicer: Employees of a registered loan servicer who negotiate the modification of an existing residential mortgage loan on behalf of the servicer, and who do not otherwise act as a mortgage loan originator.

Individual selling manufactured homes: Any individual involved in the sale of manufactured homes if exempted from licensing by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

Filing Initial Applications for a License (NMLS website)

Loan originator license applicants must submit the completed MU4 form to the NMLS with a nonrefundable application fee of $291.50, which includes fingerprint fees and the NMLS processing fee. If a credit report has not been authorized in the 30 days preceding the application, a $15 fee will be accessed.

Ensuring Ethical Responsibility

Background checks, fingerprints, and disclosures regarding past or pending criminal, civil, or regulatory actions are used to evaluate the ethical fitness of an individual who is applying for a license as a mortgage loan originator.
Criminal Background Check (12-E §599-d(9))

Article 12-E requires license applicants to provide fingerprints for submission to the Federal Bureau of Investigation (FBI) and state agencies authorized to receive them. Applicants must also provide authorization, on the MU4 form, for a background check.

Criminal, Civil and Regulatory Action Disclosures

Applicants for a license as a mortgage loan originator are required to make disclosures regarding any criminal, civil, or regulatory actions that have ever been brought against them.

Ensuring Financial Responsibility

Credit history and financial disclosures are used to evaluate the ethical fitness of an individual who is applying for a license as a mortgage loan originator. Loan originators must also satisfy surety bond requirements.

Credit History

Applicants for licenses as mortgage loan originators must provide consent for an independent credit report from a consumer reporting agency.

Financial Disclosures

Using an MU4 form, license applicants are required to make disclosures about their financial circumstances. A license applicant must disclose on the MU4 form whether he/she has:

- Within the past ten years, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition
- Within the past ten years, exercised control over an organization that has filed a bankruptcy petition or been the subject of an involuntary bankruptcy action
- Ever had a bonding company deny, pay out, or revoke a bond
- Any unsatisfied judgments or liens pending

Mortgage Loan Originator Surety Bonds (3 NYCRR §420.15)

Mortgage loan originators must be covered by a surety bond in accordance with New York Banking Law. However, the surety bond of a loan originator’s employer may be used to satisfy the mortgage loan originator’s surety bond requirement.

The required surety bond must be maintained in an amount that reflects the dollar amount of loans originated by the mortgage loan originator as determined by the following requirements:
<table>
<thead>
<tr>
<th>Aggregate amount of NY loans originated</th>
<th>Amount of bond</th>
</tr>
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<tbody>
<tr>
<td>Less than $1,000,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>$1,000,000 to $7,499,999</td>
<td>$15,000</td>
</tr>
<tr>
<td>$7,500,000 to $14,999,999</td>
<td>$25,000</td>
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<tr>
<td>$15,000,000 to 29,999,999</td>
<td>$50,000</td>
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<tr>
<td>$30,000,000 to 49,999,999</td>
<td>$75,000</td>
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<tr>
<td>$50,000,000+</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

New York law requires loan originators or the loan originating entity to file a new or supplemental bond immediately upon recovery on any claim or action on or under the bond.

**Ensuring Accountability**

One of the primary goals of Article 12-E is to ensure that mortgage loan originators are accountable for any wrongful actions or omissions that occur during a mortgage lending transaction. One of the first steps in creating a system of accountability under the NMLS is the assignment of a unique identifier to each mortgage loan originator. The number assigned to each mortgage loan originator must “be clearly shown” on:

- All residential mortgage loan application forms
- All solicitations and advertisements, including those posted on websites

(12-E §599-p)

Use of the unique identifier facilitates the process of locating the mortgage loan originator who might be responsible for errors, omissions, or violations of the law during the mortgage lending process. Use of the NMLS also helps regulators track loan originators by requiring them to provide notice of their termination of employment with the submission of an MU4 form to the system.

Employers also have accountability for the actions of the loan originators that they employ. When license applicants submit an MU4 form, employers are required to:

- Review the information provided by the applicant to verify its accuracy
- Attest that the applicant is fully qualified for a position as a loan originator, with knowledge of the laws and regulations of the jurisdiction in which he/she intends to obtain a license and originate loans

**Ensuring Professionalism**

The federal S.A.F.E Act and Article 12-E ensure the professionalism of mortgage loan originators by requiring them to meet pre-licensing and continuing education requirements.
Initial Education Requirements (12-E §599-f and 3 NYCRR §420.11)

In order to obtain an initial license as a mortgage loan originator, applicants must complete 20 hours of courses, approved by the NMLS. The minimum course requirements include:

- Three hours on federal laws and regulations
- Three hours on ethics, including fraud, consumer protection, and fair lending
- Two hours on lending standards for nontraditional mortgage products
- Three hours of training on applicable New York State Law and regulations

New York Law differentiates between experienced loan originators and those with lesser experience, requiring different course formats for the two categories of individuals as follows. Regardless of the differentiation, both experienced and inexperienced loan originators must conform to minimum federal S.A.F.E. Act and NMLS initial requirements.

Inexperienced loan originators: A loan originator with less than four years of experience as an originator must take pre-licensing education courses given in the following formats:

- A traditional live classroom setting
- Fully interactive video or audio conferences, where there is an opportunity for students to ask questions
- A format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects

Experienced mortgage loan originators: New York Law considers loan originators with four or more years of experience as “experienced.” Experienced loan originators are required to take only half of the required credit hours in the same format for the inexperienced loan originators listed above. The remaining credit hours may be satisfied in any of the preceding formats or any of the following formats:

- Online programs or webcasts
- Audio and video recordings
- Video conferencing and teleconferencing
- Computer based learning software
- Live satellite broadcasts

Loan originator applicants can receive credit in New York for the courses that he/she takes on federal laws and ethics in another jurisdiction.

Testing (12-E §599-g and 3 NYCRR §420.13)

In addition to required education, license applicants must pass an examination that tests applicants’ knowledge of ethics, federal and state mortgage lending laws and regulations, and federal and state laws on fraud, consumer protection, nontraditional mortgages, and fair lending.
Testing includes a national component as well as a New York state component, developed by the NMLS. Applicants must pass each test by answering 75% of the questions correctly.

On June 30, 2011 the Department of Housing and Urban Development (HUD) issued a final rule concerning implementation of the S.A.F.E. Act. The final rule clarified the number of test attempts a mortgage loan originator licensing candidate is permitted. A loan originator who fails his/her initial attempt is permitted two additional test attempts. He/she must wait 30 days between each test attempt. If, on the third test attempt, the loan originator does not pass, he/she must wait six months (180 days) prior to attempting the test again. If a licensed mortgage loan originator fails to maintain a valid license for a period of five years or longer, he/she must retake the test that is administered to applicants for an initial license.

**Continuing Education Requirements (12-E §599-j and 3 NYCRR §420.14)**

Each year, mortgage loan originators must complete **11 hours** of continuing education with an approved education provider. The minimum course requirements include:

- Three hours on federal laws and regulations
- Two hours on ethics, including fraud, consumer protection, and fair lending
- Two hours on lending standards for nontraditional mortgage products
- Three hours of training on applicable New York State Law and regulations
- One hour of undefined instruction on mortgage origination

The following restrictions apply to credit granted for continuing education courses:

- Loan originators are only awarded credit for a course in the year in which the course is taken
- Courses may not be carried over. Continuing education credit may only be earned in the year in which the course is taken. Pre-licensing education credit may not be counted towards continuing education credit.

The format regulations for experienced and non-experienced loan originators are identical to the formats required for initial licensing education hours.

**Grounds for Denying Applications for Loan Originator Licenses (12-E §599-e and 3 NYCRR§420.6(e))**

Article 12-E and Part 420 of the Banking Regulations establish minimum standards for the licensing of mortgage loan originators. The Superintendent cannot issue a license to an applicant unless the applicant can meet the following standards:

- **No License Revocation:** The applicant must be able to show that he/she has never had a license revoked in any jurisdiction.
- **No Disqualifying Associations:** The applicant must show that he/she has not been a director, partner, or substantial stockholder of an originating entity which has had a
registration or license revoked by the Superintendent or a regulator of another state. Additionally, the applicant must show that he/she has not been an employee, officer or agent of, or a consultant to, an originating entity that has had a registration or license revoked by the Superintendent or a regulator of another state.

- **No Felony Conviction:** The applicant must be able to show that he/she had not been convicted, pled guilty, or pled no contest to a felony in a domestic, foreign, or military court within the seven-year period that precedes the date of the application. Pardons of convictions are not regarded as convictions.

- **Satisfaction of Fitness Standards:** The applicant must demonstrate the general character and fitness necessary for the Superintendent to determine that he/she will operate honestly, fairly, and efficiently.

- **Completion of Education and Testing Requirements:** The applicant must complete all pre-licensing course requirements and pass both the national and state component tests developed by the NMLS.

- **Satisfaction of Surety Bond Requirement:** The applicant must show that the mortgage broker that employs him/her has a surety bond that covers the actions of its mortgage loan originators.

**License Renewal for Loan Originators (12-E §599-i and 3 NYCRR §420.9)**

Article 12-E and Part 420 of the Banking Regulations require mortgage loan originators to renew their licenses each year. In order to renew a license, applicants must:

- Pay the annual license renewal fee of $50
- Prove that they have continued to meet the minimum standards for licensing
- Satisfy the eleven-hour continuing education requirement

Failure to meet these standards will lead to expiration of the license. If the Department terminates a license for failure to pay the annual fee and the loan originator pays the fee within 60 days of the due date, the Department will reinstate the license.

Loan originators are required to obtain course completion certificates evidencing satisfactory completion of the credit hour requirements for each annual renewal period and provide a copy to his or her originating entity or the NMLS.

**Suspension and Reinstatement (12-E §599-n and 3 NYCRR §420.21)**

Failure to pay the annual license fee will result in the termination of a loan originator’s license. Failure to complete the education requirements and provide proof of completion to the Department will also cause termination of the originator’s license. The license may be reinstated if the licensee demonstrates to the Superintendent’s satisfaction that the applicable education requirements were completed within 60 days of the annual expiration date. (12-E §599-i(2))
The Superintendent may issue an order suspending a loan originator’s license 30 days after the date the mortgage loan originator fails to file any report required to be filed pursuant to the authority provided in Article 12-E. If the Superintendent does not receive evidence from the licensee of a satisfactory replacement bond following cancellation or action on a bond, the Superintendent can immediately suspend a loan originator’s license. These initial suspensions may occur with or without a hearing on the matter.

After the Superintendent issues an order of suspension, the license may be reinstated if the licensee has cured all deficiencies described in the order. Reinstatement is at the sole discretion of the Superintendent and must occur within 90 days after the date of a suspension order. If the Superintendent does not reinstate the license, it is considered terminated. Suspensions or terminations do not affect a licensee’s civil or criminal liability for acts committed prior to the suspension/termination, and licensees with a terminated or suspended license must honor any preexisting contracts with consumers.

After the Superintendent suspends or terminates a license, the loan originator and the affected originating entity will be notified of the status of the license.

**Good Cause Suspension (3 NYCRR §420.21(b))**

The Banking Regulations give the Superintendent the authority to suspend a license without warning or a hearing for a period of up to 90 days if a possible violation presents a substantial risk of public harm. This constitutes a “good cause” suspension, and the suspension period provides time to conduct an investigation.

A good cause suspension can only take place if it is believed that a mortgage loan originator has engaged in dishonest or inequitable practices or practices which demonstrate incompetence in loan origination. A good cause suspension may also take place if the loan originator’s license is revoked in another NMLS-participating jurisdiction.

**Prohibited Practices (3 NYCRR §420.20)**

Part 420 of the Banking Regulations prohibits loan originators from performing the following acts and practices:

- Engaging in conduct prohibited by Section 38.7 of the General Regulations of the Banking Board. These regulations are discussed in the “Prohibited Conduct” section relating to mortgage bankers and mortgage brokers.
- Continuing to engage in mortgage loan origination after receiving notice of the denial of application for a license or notice of the revocation, suspension or termination of a license
- Misrepresenting his/her license status, or persuading or inducing a borrower to apply for a mortgage loan under the belief that the loan originator is licensed as a mortgage banker or registered as a mortgage broker
Publishing, advertising or displaying the loan originator license in any manner which implies that the loan originator is licensed or registered with the State of New York Banking Department to engage in mortgage loan originating activities as a mortgage banker or mortgage broker

Conducting business with any entity or individual which he or she knows or should know is an unlicensed mortgage banker or unregistered mortgage broker not otherwise exempt from the licensing and registration requirements

Engaging in any transaction, practice, or course of business that is not in good faith or does not constitute fair dealing as required by the character and fitness requirements of the Banking Law

Downloading or removing borrowers’ or mortgage loan applicants’ loan files or other information from the premises or automated systems of an originating entity without permission of the originating entity

Publishing or advertising the loan originator’s license or unique identifier in any manner which implies that the license or unique identifier can be shared or used by multiple individuals to engage in mortgage loan originating activities

Allowing any individual or entity, regardless of whether the individual or entity is registered or licensed pursuant to Article 12-D or 12-E of the Banking Law, to utilize the mortgage loan originator’s license or unique identifier to engage in mortgage loan originating activities

Simultaneously working for or being affiliated with more than one originating entity

New York also imposes restrictions on the acts and practices of loan originating entities. Under New York Law, originating entities or exempt organizations are prohibited from:

- Permitting a loan originator to engage in mortgage loan origination until acceptable proof or record of completion has been obtained by such originating entity
- Permitting any loan originator to engage in mortgage loan origination activities when it knows or has reason to know that the loan originator’s license has been terminated, suspended or revoked
- Paying compensation for mortgage loan origination activities to an unlicensed individual
- Using the unique identifier of a licensed loan originator to process or submit an application taken by any unlicensed individual

**Required Conduct (3 NYCRR §420.19)**

The Department imposes duties on loan originators and originating entities. Loan originators are required to conduct themselves in a manner that commands the confidence of the community and warrants the belief that his or her activities are conducted honestly, fairly and free from deceptive practices.
Additionally, it is the responsibility of the loan originator to promptly notify the Banking Department of the following:

- Change of primary residence address
- Any felony conviction or pending felony charges
- Any charge or conviction with respect to a misdemeanor involving financial services
- Any charge or conviction involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery or extortion
- Termination of employment (or resignation) with the originating entity
- The initiation, settlement or resolution of any complaint, action or proceeding brought by a state or federal governmental unit or self-regulatory organization in connection with a financial services-related activity or business or involving fraud, misrepresentation, consumer deception, larceny or perjury
- The initiation, settlement or resolution of any other civil action or proceeding involving fraud, misrepresentation, larceny or perjury

The Department also imposes duties on loan originators’ originating entities. Originating entities are required to submit to the Superintendent quarterly reports detailing the names and address of each new loan originator employed by or affiliated with the entity and the originator’s employment start date. The quarterly report must also include a listing of each loan originator dismissed for a violation of the Banking Law or any other state or federal law.

Originating entities are tasked with determining that each loan originator employed by the entity has the character, fitness and education qualifications to warrant the belief that he or she will engage in mortgage loan origination honestly, fairly and efficiently. Loan originating entities must create and maintain a file on each loan originator demonstrating how the entity made its determination regarding the originator’s fitness and character. Entities are also required to maintain the documents showing a loan originator’s satisfactory completion of education courses. Information on education must be retained by the entity for six years from the date of receipt. Education files must be returned to the loan originator when his or her employment terminates.

Lastly, the Department requires that entities assume responsibility for information concerning loan originators’ licenses. Originating entities must ensure that loan originator employees or independent contractors are properly licensed to engage in mortgage loan origination activities. The entity must confirm that the employee’s license has not been terminated, suspended or revoked. Originating entities are responsible for assigning loan originators only to locations licensed or registered by the Superintendent. Licenses must be properly displayed at these locations, and entities must ensure that each loan originator at the locations has a valid NMLS unique identifier.
Disciplinary Action and Penalties

The following section covers the disciplinary actions and penalties for mortgage bankers, brokers and loan originators. As a precursor to disciplinary action, the Superintendent has the authority to investigate a business and examine the books, records, accounts and files of any employee for the purpose of discovering a violation. New York Law requires licensees to provide the Superintendent or a representative free access to offices and places of business including all books, records and accounts. Examination expenses must be paid by the licensee.

Grounds for Actions and Penalties (12-D §598 and 12-E §599-n)

Under New York Law, if an unlicensed individual makes a mortgage loan in New York, he/she is guilty of a Class A misdemeanor.

The Department has the authority to discipline individuals who violate Article 12-D or any related rule or regulation. The Department may also suspend or revoke a license or registration. An administrative fine may be levied against an individual in the amount of up to $5,000 per violation, with a maximum of $100,000 per proceeding.

The Superintendent may take action on a license if any of the following occur:

- The licensee or registrant has violated any provisions of Article 12-D, or any related rule or regulation
- A condition exists which would have caused the Superintendent to deny a license at the time of the original application
- The licensee or registrant has committed a crime involving moral turpitude or fraudulent or dishonest dealing

Loan originator licensees may face disciplinary action by the Superintendent after appropriate notice and hearing. The following actions may be grounds for disciplinary action:

- Fraud or bribery in securing a license
- Making false statements in an application for licensure, which would have been grounds for rejection of the application
- Making false statements on any form or document requested by the Superintendent for examination or review pursuant to Banking Law and regulations
- A pattern of conduct indicating incompetence or untrustworthiness
- Conviction of any crime which would have a bearing on the fitness or ability of a mortgage loan originator to engage in mortgage loan origination activities, or
- Failure to perform his or her duties and responsibilities in an honest, fair and reasonable manner
Hearings (3 NYCRR §420.21), (NYSBD Regulation G-111)

As mentioned previously, except in “good cause” circumstances, licensees are entitled to a hearing prior to suspension or revocation of a license. The Administrative Procedures Act governs the hearings, and Section G-111 of the Banking Regulations outlines the procedures for the hearings. The Department will appoint hearing officers to conduct the hearing, and licensees will receive written notice of the hearings from the hearing officer at least ten days prior to the hearing date. The notice must contain the following information:

- The time, place and nature of the hearing
- The legal authority and jurisdiction under which the hearing is to be held
- Reference to particular statutes, regulations and rules involved
- A short and accurate statement of matters to be adjudicated
- Identification of the designated hearing officer

A licensee may file a written answer to the notice which the Department must receive not less than three days prior to the date of hearing. (NYSBD Regulation G-111.3)

The Department or the licensee may request a period of discovery and may issue subpoenas to third parties. (NYSBD Regulation G-111.5) A record is created of each hearing, including transcripts, orders, subpoenas and submitted evidence. If a licensee fails to appear without requesting a postponement, a decision will still be rendered by the hearing officer. (NYSBD Regulation G-111.7)

Suspension, Revocation and Rescission of Licenses

New York Banking Law gives the Superintendent the power to suspend or revoke a license or registration of a broker, banker or loan originator. The Superintendent may revoke a license if it is found that the licensee has violated any provision of Article 12-D or 12-E, or any rule, regulation or other applicable law. Additionally, if the Superintendent finds any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Superintendent to refuse to issue such initial license, the license may be revoked. Generally, a revocation or suspension cannot occur without a hearing.

In lieu of suspension or revocation, a licensee may surrender any license to the Superintendent. However, surrender does not absolve the licensee of liability for actions committed prior to the surrender. Similarly, suspension, revocation or surrender does not affect legal contracts between licensees and consumers made when the license was valid. (3 NYCRR §420.10)

Whenever the Superintendent revokes a license, notice will be provided to the licensee. If a situation exists where there is substantial risk of public harm, the Superintendent may suspend a license for up to 30 days. A loan originator’s license may be suspended for up to 90 days. There must be a showing of good cause for the Superintendent to suspend a license. According to New York Law, “good cause” exists when the licensee or registrant has defaulted or is likely to
default in performing its financial responsibilities or engages in dishonest or inequitable practices which may cause substantial harm. (3 NYCRR §420.21(b))

The law pertaining to loan originators defines “good cause” as existing only when the mortgage loan originator has engaged or engages in dishonest or inequitable practices or practices which demonstrate incompetent mortgage loan origination, and which practices may cause substantial harm to the persons afforded the protection of Article 12-D or 12-E of the Banking Law, or the license of the mortgage loan originator was revoked in another state or jurisdiction participating in the NMLS. (12-E §599-n(3))

Notice of a hearing is not required for the Superintendent to issue an order of suspension in the following circumstances:

- 30 days after the date the mortgage loan originator fails to file any report required to be filed with the Superintendent
- Immediately upon notice that any required surety bond with respect to the licensee is no longer in effect

It is within the Superintendent’s sole discretion to reinstate a license if, after an investigation, the Superintendent decides that the good cause for suspension no longer exists or if the licensee has cured the deficiencies within 90 days.

Except where good cause exists to immediately suspend a license, the Superintendent may revoke a license only after notice and a hearing as provided in Supervisory Procedure G111 and described in this course in the mortgage broker/banker section on disciplinary action. The Superintendent can reinstate a license if the licensee or registrant makes restitution to consumers. Restitution must include all the fees the licensee improperly charged the consumer.

**The Home Equity Theft Prevention Act (HETPA) (RPL 8 §265-A)**

In February 2007, the Home Equity Theft Prevention Act (HETPA) was added to the New York Real Property Law. This Act came in response to the rising number of defaults on mortgage loans and foreclosures on New York residential real estate. The New York Legislature expressed concern that “homeowners who are in default of their mortgages or in foreclosure may be vulnerable to fraud, deception, and unfair dealing by Home Equity Purchasers.”

The Legislature saw a growing trend of equity purchasers who “induce homeowners to sell their homes for a small fraction of their fair market values, or in some cases even sign away their homes, the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices.”

HETPA covers transactions involving the sale of a home in foreclosure or a home in default where the transaction includes a written reconveyance arrangement. HETPA applies when a person (equity seller) enters into an agreement (covered contract) with a person (equity purchaser) to acquire title of the equity seller’s residence that is in foreclosure. The Act also

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applies when the equity seller is in default, which means the equity seller is two or more months behind in the mortgage payments.

For the Act to be applicable, the residence of the equity seller must be the seller’s primary residence and a one- to four-family dwelling, and the covered contract must have a reconveyance arrangement. A reconveyance arrangement is an agreement for an equity purchaser to reconvey an interest in the residence back to the equity seller to enable the equity seller to regain possession.

**Equity Purchaser Exemptions (RPL 8 §265-a(2)(e))**

Under the Home Equity Theft Prevention Act an “equity purchaser” does not include a person acquiring title:

- To use the property as his or her primary residence
- By a deed from a referee in a foreclosure sale
- At any sale of property authorized by statute
- By order or judgment of any court
- From a spouse, or from a parent, grandparent, child, grandchild or sibling of the person (or the person’s spouse)
- As a not-for-profit housing organization or as a public housing agency
- As a bona fide purchaser or encumbrancer for value (for example, a lien holder)

**HETPA Requirements**

HETPA contains several requirements to ensure the protection of equity sellers. HETPA requires the following:

**Entire Agreement Requirement:** Covered contracts must contain the entire agreement of the parties, including:

- The total consideration (compensation)
- A complete description of the terms of payment or other consideration
- The time for delivery of possession
- The terms of any rental or lease agreement
- The terms of any reconveyance arrangement

The agreement must include the following language in at least **14-point bold type** located in close proximity to the space for the equity seller’s signature:
NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract at any time before midnight of
___________________________ (Date),
_____________________________________________________ (Name of
Equity Purchaser) or anyone working for ____________________________
(Name of Equity Purchaser) CANNOT ask you to sign or have you sign any
deed or any other document until your right to cancel this contract has ended.
See attached notice of cancellation form for an explanation of this right. You
should always consult an attorney or community organization before signing
any legal documents concerning your home. It is advisable that you find your
own attorney, and not consult with an attorney who has been provided to you
by the purchaser. The law requires that this contract contain the entire
agreement. You should not rely upon any other written or oral agreement or
promise.

Notice of Cancellation (Rescission) Requirement: Covered contracts must include a statutory
form of Notice of Cancellation and specific statutory language alerting the equity seller to the
right to cancel. These forms may be found in RPL 265-a(6)(a) and (4)(i) and provide for a five
business-day cancellation period following execution of the agreement.

Font Requirement: All covered contracts and the Notice of Cancellation must be written in at
least 12-point bold type, in English or in both English and Spanish if Spanish is the primary
language of the equity seller.

The language of the cancellation notice is as follows:

NOTICE OF CANCELLATION

This contract was entered into on _______________________
(Enter date covered contract signed)

You may cancel this contract for the sale of your house, without any penalty
or obligation, at any time before midnight of
___________________________ (Enter date).

To cancel this transaction, personally deliver a signed and dated copy of this
cancellation notice, or send it by facsimile, United States mail, or an
established commercial letter delivery service, indicating cancellation to
____________________________________________________ (Name of
purchaser), at ________________________________ (Street address of
purchaser's place of business and facsimile number if any) NOT LATER
THAN midnight of ________________________ (Enter
date). If you wish to cancel this contract, sign and date both copies and
return one copy immediately to the purchaser.

I hereby cancel this transaction.
Prohibitions During Five Business-Day Rescission Period: HETPA prohibits the equity purchaser from engaging in certain activities during the five business-day cancellation period following execution of the agreement. During the cancellation period, the purchaser may not:

- Give the seller any form of payment for any piece of the property or for any service performed
- Take the deed to the seller’s residence or any other document that would give the purchaser part or full ownership of the residence
- Entice the seller in any way to give up the right to cancel the contract or to shorten the cancellation period
- File a record of any document signed, by the seller or that would give the purchaser part or full ownership of the residence, at the county clerk’s office
- Take out a mortgage on the house or any part of it
- Sell or give ownership of the house or any part of it to another person

Restricted Representations: The Act also restricts the information and representations that may be made at any time by an equity purchaser to an equity seller.

Equity purchasers may not deceive or mislead a seller in any way about any aspect of the sale of the house or about any aspect of a buyback agreement. Specifically, an equity purchaser may not deceive or mislead the seller about:

- The value of the residence
- The amount of money the seller will receive as a result of the sale
- The timing of the foreclosure process, or about how much time the seller has until the residence is put up for foreclosure auction by the court
- The terms of any contracts
- The nature of any document the purchaser asks the seller to sign
- The seller’s rights and responsibilities before, during, or after the sale of the house

The provisions of HETPA may not be waived.

Voidable Transactions (RPL 8 §265-a(8)(a))

Any transaction which is in material violation of HETPA is voidable and may be rescinded by the equity seller within two years of the date of the recording of the conveyance of the residential real property. In order to rescind, the equity seller must give a Notice of Rescission to the equity seller.
purchaser and his or her successors in interest and record the Notice of Rescission in the recording office of the county in which the property is located.

**Complete Contracts Under the Act (RPL 8 §265-a(4))**

The contract must be completely filled in, then signed and dated by both parties. Under the Act, the contract must contain all of the following information:

- A notice informing the seller of his/her right to cancel (rescind) the contract within five business days of the day it is signed
- A cancellation form that can be completed by the seller and returned to the purchaser in order to cancel the contract
- The name, business address, and telephone number of the purchaser
- The address of the house that is being sold
- The total value of the house that is being sold, plus any other fees or payments that are due to the purchaser
- A complete description of the terms of payment that will be given to the seller
- A complete description of any services the purchaser has agreed to or been promised
- The time at which the residence will officially become the property of the purchaser
- The time by which the seller must move from the residence
- The terms of any rental or lease agreement
- The terms of any buyback or reconveyance agreement

**Reconveyance/Buyback Agreements (RPL 8 §265-a(11)(b))**

HETPA permits purchasers to offer sellers a buyback agreement in the sale contract. In a buyback agreement, the buyer takes ownership from the seller in exchange for a service. An example of a purchaser-provided service would be bringing the seller current on mortgage payments. The purchaser retains ownership of the home until a predetermined date. On that date, the seller must repay the purchaser for the payments made on the seller’s behalf and for services rendered. Once payment is made, the deed will be reconveyed to the seller. The Act requires the purchaser to make sure that a seller can reasonably afford the terms of a buyback.

In those instances in which the residence is not reconveyed to the equity seller, the equity purchaser must, within 120 days of either eviction or voluntary relinquishment of possession of the residence, provide the equity seller with cash payments or consideration of at least 82% of the fair market value of the property. The purchaser is permitted to deduct any debts such as unpaid rent or funds to repair damages to the property.

**Bona Fide Errors (RPL 8 §265-a(10)(b))**

An equity purchaser that violates the law while acting in good faith may avoid liability by making restitution to the equity seller. The violation must be the result of a compliance failure.
that was unintentional. The purchaser must notify the seller of the compliance failure and make appropriate restitution within 90 days of the date of the contract.

Under the law, bona fide errors include clerical, calculation, computer malfunction, programming and printing errors. The law goes on to say that an error in legal judgment regarding the purchaser’s obligations or failure to provide material information is not considered a bona fide error.

**Penalties for Violations of HETPA (RPL 8 §265-a (13))**

An equity seller has six years to bring an action to recover damages against a purchaser. Purchasers may be liable for actual damages plus attorneys’ fees and costs. Equitable relief may be granted to the seller in the amount of up to three times the actual damages.

There are also criminal penalties for violations of HETPA. If it is found that a purchaser violated the Act with intent to defraud, he/she is guilty of a Class E felony and could face incarceration and/or a fine up to $25,000. If a purchaser “knowingly violates” the Act, the purchaser is guilty of a Class A misdemeanor and could face a fine up to $25,000 and/or imprisonment.

**Contracts for Distressed Property Consulting Under the Foreclosure Prevention and Responsible Lending Act**

In November 2009, Mayor Bloomberg signed into law legislation requiring distressed property consultants to inform homeowners facing foreclosure about their rights. Bloomberg was quoted as saying that “regulating distressed property consultants is an important step in protecting homeowners and consumers in the City of New York.”

This legislation came on the heels of the subprime lending reform bill signed into law on August 5, 2008 by Governor David A. Paterson. The Foreclosure Prevention and Responsible Lending Act targeted the subprime lending crisis by providing assistance to homeowners at risk of losing their homes and by establishing further protections in the law to mitigate the possibility of a similar crisis in the future.

Section 256-b of the Act targets foreclosure rescue scams operated by those who seek to take advantage of homeowners in default. This type of homeowner is considered a “distressed homeowner” and is defined as, “...a natural person who is the mortgagor with respect to a distressed home loan or who is in danger of losing a home for nonpayment of taxes.”

The law regulates property consultants by prohibiting them from the following activities:

- Performing any services for the homeowner without a written contract


265-B(1)(a)
• Charging or accepting fees without first completing the service
• Taking power of attorney from a homeowner, except under very limited circumstances
• Keeping any original loan document relating to the distressed home
• Inducing a homeowner to execute a contract not in accordance with the Act

The law also establishes strict standards for contracts and provides homeowners with the right to cancel the consulting contract within five business days of consummation. Certain regulated entities are exempt but still expected to conduct business based on the standards established by the statute.

**Contracts for Distressed Property Consulting (RPL 8 §265-b(3))**

New York Law has very specific requirements relating to the contract for distressed consultant services. Consulting services are defined in the Act as services provided by a distressed property consultant to a homeowner that the consultant represents will help to stop, enjoin or delay foreclosure. Distressed consultants also represent that they can obtain forbearances on tax issues relating to the home, assist in rights of redemption, obtain waivers of acceleration clauses, or assist the homeowner in obtaining a loan or an advance of funds.

Contracts for distressed property consulting must be in writing and must contain the entire agreement of the parties. This requirement renders verbal agreements not-enforceable. The proposed contract must be provided, in advance, to the homeowner for review. The contract must be in at least 12-point type and in the same language that was used between the consultant and the homeowner to discuss the consultant’s services.

The contract must provide full disclosure. It must include:

• The exact nature of the services to be provided by the consultant and anyone who is associated with the consultant
• The total amount and terms of compensation for such services
• The name, business address, and telephone number of the distressed property consultant
• A date for the contract to be personally signed by the homeowner and the distressed property consultant before a Notary Public
• A specific Right to Cancel in **14-point boldface** type

Contracts cannot limit the liability of the distressed property consultant or waive any provisions under this statute. They may not have a provision mandating arbitration of a dispute arising under the Act or from the contract.

**Notice of Cancellation (RPL 8 §265-b(3)(viii))**

Homeowners have until midnight of the fifth business day to cancel the contract. The Notice of Cancellation must be in writing, and two copies must be delivered by the homeowner to the property consultant via mail, fax or email. If a distressed property consultant receives the Notice
of Cancellation, he/she must return the original contract and any other documents signed by the homeowner within ten days.

**Penalties for Violation of the Foreclosure Prevention and Responsible Lending Act (RPL 8 §265-b (4)(d))**

Distressed property consultants who violate the Act face a penalty in the amount of up to $10,000 for each violation. If it is found that the consultant intentionally or recklessly violated the statute, he or she may be responsible for actual damages, treble damages (three times the amount of actual damages) and attorneys’ fees. Lastly, the Attorney General has the power to issue a cease and desist order against the consultant.

**Discussion Scenario: Consumer Complaint Letter**

March 16, 2010  
State of New York  
Department of Banking  

To Whom It May Concern:

On February 2, 2010 I telephoned the Marvelous Mortgage Company of Anytown, New York. I spoke to a Robert DoGood. On that day, Mr. DoGood advised me that his company was one of the most competitive in the state. He told me the rate to refinance my mortgage for 15 years would be 6.625% and zero points. He also told me that based upon the information I gave and my credit report that I would also qualify for this loan with ease – “slam dunk” I believe were his exact words.

A sudden death in my family made it impossible for me to see Mr. DoGood until February 13th. On the morning of the 13th, I called Mr. DoGood to confirm our appointment and to verify that my rate would still be 6.625% with zero points – which he indeed confirmed. That evening when Mr. DoGood arrived at my home for our appointment (late), he advised me that turmoil in the market that afternoon caused the rates to go up to 6.75%. We proceeded to complete the application anyway.

After apologizing for his lateness, Mr. DoGood quickly completed the application, told me to review the documents and disclosures he asked me to sign, and because he was unable to make copies of our originals at that time, he said he would have his processor forward my originals back to me with some additional papers.

I left a message for Mr. DoGood on February 27th. When he returned my call, I asked how everything was going and he said “fine.” I indicated that I had read that rates were going up, and I was relieved because I knew I had a 30-day lock. I asked when the appraisal was going to be done, and he said that it had been ordered but that the appraisers were quite busy this time of year. He said he would check on it, but not to worry, I would be closing soon.
On March 16th, Mr. DoGood advised me that my rate would be 7.375%. I told Mr. DoGood that wasn’t what I was told my rate would be and that I wanted my money back. He said that the fees he collected from me were already spent and that my rate was “floating.” He said he would forward a copy of the appraisal to me but that no money would be refunded.

I am sick about the loss of money as well as the time I have wasted, especially now that rates are almost a full point higher! Can you please help me get my money back?

Thank you,
I.M. NotHappy

Marvelous Mortgage Company Loan Log

Borrower: I.M. NotHappy  Loan No. 12341-0
Address: 4332 W Anywhere St  LO/Proc: R. DoGood/L. Smith

<table>
<thead>
<tr>
<th>Date</th>
<th>Notes to processor</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/13/10</td>
<td>Linda – copy attached original documents and return to borrower. Open file and send GFE, TIL and broker agreement. Lock loan at Investor A at 6.625% and zero points. (RD)</td>
</tr>
<tr>
<td>2/16/10</td>
<td>Opened file, ordered appraisal, sent originals back to borrower. (LS)</td>
</tr>
<tr>
<td>2/18/10</td>
<td>Credit report back – looks OK – alt. doc, should be ready to go to UW as soon as I get appraisal. (LS)</td>
</tr>
<tr>
<td>2/18/10</td>
<td>Notes to processor</td>
</tr>
<tr>
<td></td>
<td>Linda – lock-in fax confirmation to Investor A shows busy, called Stan in secondary marketing dept., he shows NO LOCK! Rates have moved…will have to float. Notice we didn’t send the GFE/TILA/Retention …back date disclosures but do not send lock confirmation or retention agreement. (RD)</td>
</tr>
<tr>
<td>2/27/10</td>
<td>Notes to processor</td>
</tr>
<tr>
<td></td>
<td>Linda – borrower called on appraisal. What is status? (RD)</td>
</tr>
<tr>
<td>2/27/10</td>
<td>Notes to LO</td>
</tr>
<tr>
<td></td>
<td>Rob – I called Fabulous Appraisal – Betty said they let their clerical person go because of mistakes, couldn’t find order. Will send Tom out ASAP. Rates are rising and loan is still not locked yet. (LS)</td>
</tr>
<tr>
<td>3/4/10</td>
<td>Loan submitted to Investor A (LS)</td>
</tr>
<tr>
<td>3/6/10</td>
<td>Notes to LO</td>
</tr>
<tr>
<td></td>
<td>Rob – loan approved – rate is floating; need to send approval letter. (LS)</td>
</tr>
<tr>
<td>3/6/10</td>
<td>Notes to processor</td>
</tr>
<tr>
<td></td>
<td>Send approval out dated March 9 at original rate and zero points. Will advise borrower we are unable to close… don’t see lock agreement in file (RD)</td>
</tr>
<tr>
<td>3/11/10</td>
<td>Advised borrower, investor needed 48 hours notice to close, plus loan has to fund within rescission period. Only thing we can do is wait until original “lock” expires, then get the best market price. Will call borrower on 3/16/10. (RD)</td>
</tr>
</tbody>
</table>

Overview of New York Mortgage Laws
(v4.1)
**Discussion Questions**

Refer to the Consumer Complaint Letter. How do you think this complaint might be:

- Handled by the regulator?
- Handled by Marvelous Mortgage Company?

Refer to the Marvelous Mortgage Company Loan Log. How could better communication have affected or prevented the complaint? What about follow-up?

Refer to the Consumer Complaint Letter and Loan Log. What potential perceptions have been created by the interaction between the consumer and the mortgage company?

- Perception of the regulator
- Perception of the consumer
- Perception of the mortgage company owner/management

*Do you think the loan originator’s actions were ethical or unethical? What most influenced your decision?*

**Consumer Complaint Letter: The Potential Outcome**

It is a possibility that a complaint letter such as this could motivate the regulator to investigate the mortgage broker company. While Rob DoGood’s actions might not be standard operating procedure for all loan originators at his company, I.M. NotHappy’s complaint certainly puts the company at risk for being put under the microscope.

The company would be wise to take a close look at its policies and procedures pertaining to rate locks and floating rates. Management may need to retrain staff and ensure loan originators are clear on following borrower requests to lock an interest rate.

Based on discrepancies between the consumer’s complaint letter to the regulator and the notes in the Loan Log, it appears that Rob DoGood did a poor job of communicating with I.M. NotHappy and, in fact, may have lied about certain aspects of the loan process. Appropriately advising the customer about the rate lock situation, and possibly the appraisal, seems questionable.

Ultimately the loan originator handled the rate lock in a sloppy and unethical manner. Mistakes happen, but the customer should have been advised immediately when it was discovered that the rate was not locked as expected. The telling event is I.M. NotHappy’s description of a call placed to Rob DoGood on February 27th – the loan originator was well aware the rate was floating based on the Loan Log, but the customer was under the impression the rate was locked.