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Legislative Update:
What's in Store for the Mortgage Industry

Connecticut -- A Look Back at 2012
and a Look Ahead at 2013

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Proposed Electronic Land Recording Regulations

Some Background

- The proposed regulations are being promulgated pursuant to URPERA.
- At present -- Town clerks uniformly accept paper documents for recording.
- Under the proposed regulation -- Town clerks will continue to accept paper document but may also elect to accept electronic documents as well.
- This regulation will assure that:
 - Town clerks who accept electronic documents will do so in a manner that is consistent with national and statewide practices.
 - Electronic land records and recordkeeping systems will be maintained properly and securely.



The regulation establishes:

- Technical standards -- for document models, data formats, and document formats that are consistent with those used in other jurisdictions throughout the country.
- Electronic recording process requirements -- for the processing of documents, electronic signatures and notarizations, to ensure that these practices comply with existing state law and are consistent throughout the state.
- Formal Contract Requirements -- The requirement for an agreement between the town clerk and the “delivery agent” to ensure that specific “electronic recording” elements are addressed in a formal contract between those parties.
- Record Security and Retention Requirements -- The regulation also ensures that records will be transmitted and stored in a secure manner and managed according to established retention, preservation and disclosure requirements.



Agreements and Procedures (Section 7-35ee-10):

- ***Mandatory Agreement between Town Clerk and Delivery Agent***
- ***Contents of Agreement – Agreement must include, at a minimum --***
 - (1) Accepted electronic recording models;
 - (2) Accepted document types;
 - (3) Defined technical specifications for data formats, document formats, electronic transmissions and security;
 - (4) Indexing fields required for each document code;
 - (5) Electronic signature and notarization requirements;
 - (6) Payment options for recording fees and applicable taxes;
 - (7) Hours during which electronic submissions will be accepted and processing schedules that affect order of acceptance;
 - (8) Document acceptance and rejection requirements and procedures;
 - (9) Responsibility of the delivery agent to review the qualifications of each potential submitter and to approve the potential submitter prior to granting access to the electronic document delivery system; and
 - (10) Responsibility of the delivery agent to enter into an agreement with each approved submitter, in which the submitter agrees to submit documents for recording in accordance with all applicable state statutes and regulations and to maintain the security of the systems within the submitter's offices.



Electronic Recording Procedures --

- Town clerk must establish procedures for electronic recording that include items 1-8.
- Procedures must be posted in town clerk's office and on municipal web site.

Status of Proposed Regulations:

- 30 day review period following publication of the Notice of Intent in the Connecticut Law Journal on September 11, 2012 completed;
- No comments or questions were submitted during the review period;
- Next Steps:
 - Review by the Attorney General's Office;
 - Review by the General Assembly's Regulation Review Committee;
 - Filing with the Secretary of State's Office.

The text of the proposed regulation remains the same as announced on September 11th. The proposed regulation continues to be available online at <http://www.cslib.org/publicrecords/electronicfiling> or on request from this office.

Regulations could become effective the first quarter of 2013 -- at long last!



New Mortgage Laws Effective October 1, 2012:

A number of new Connecticut laws became effective on October 1st. Several provisions of Public Act 12-96 impact the residential mortgage industry in Connecticut:

Mortgage Licensing (Sections 7-8 including 36a-485 and 36c-486)

Mortgage Loan Originator Definition -- includes an individual acting for personal gain or for the personal gain of their employer or retainer

Mortgage Loan Originator Exemptions --

- modifies the existing licensing exemption for “quasi-governmental agencies” to instead apply to “housing finance agencies” and
- exempts employees of bona fide nonprofit organizations that promote affordable housing or provide home ownership education or similar services.
- Changes exemption for negotiating mortgage on dwelling owned but not lived in by an individual (not exempt if individual habitually engages in such activities)

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Mortgage Licensing (Sections 7-8 including 36a-485 and 36c-486)

Mortgage Broker licensing definition and exemptions -- adds provisions that mortgage broker is not source of funds and is not MLO working for its sponsoring mortgage lender, correspondent lender, broker or exempt registrant.

Mortgage Lender and Correspondent Lender licensing exemption --

- housing finance agency exemption
- secondary loan to immediate family member
- bona fide nonprofit *organizations* exemption



Loan Processors and Underwriters (Section 8)

New Licensing requirements and exemption

- General licensing requirement now applicable specifically to loan processors and underwriters
- New exemptions:
 - loan processors and underwriters employed by licensee and working under supervision and direction of licensed MLO
 - employee of exempt financial institution working under supervision and direction of licensed or registered MLO
 - individual processing or underwriting in connection with residential mortgage loan originated by individual not required to be licensed or registered as MLO
- Loan processors and underwriters may not be sponsored by more than one person at a time



Employee and Independent Contractor Definitions(Section 7)

- Independent Contractor is not an employee.
- Independent Contractor's compensation is reported on an IRS Form 1099.
- Employee is controlled by their employer and has compensation reported on a W-2 issued by the employer.

Note: Registered MLO is an MLO --

- employed by a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency.
- registered with NMLS with a unique identifier.



Qualified Individual and Branch Manager Licensing Requirements (Sections 10-11 and 13) --

Effective November 1st, Qualified Individuals and Branch Managers must be licensed as MLO's.

- Current law requires QI's at the main office and Branch Managers at each branch of a licensed lender, correspondent lender and broker operation.
- Must meet experience, education and testing requirements.

Expunged Criminal Convictions and License Eligibility (Section 12) -- licenses may not be denied on basis of **expunged** criminal conviction -- in addition to **pardoned** criminal conviction.

Testing Requirements (Section 13) -- Written NMLSR test may now be taken 3 times before a 6-month sit-out period -- previously it could be taken 4 times.



Banking Commissioner Enforcement (Sections 8 and 14) --

Commissioner may now bring an enforcement action or issue a cease and desist if it appears that someone would violate mortgage licensing statutes or regulations -- previously enforcement could be taken only if someone violated or was about to violate mortgage laws or regulations.

Licensed lenders, correspondent lenders and brokers already liable for acts of its agents -- suspension, revocation and refusal to renew available to Commissioner if any QI, branch manager, employee or agent made material misstatement, committed fraud, violated law or breached agreement with borrower.

- Agent NOW includes settlement agent -- including settlement agents selected by borrower from licensee's approved list.



Reporting Requirements (Section 16)

- Registered entities exempt from licensing requirements nonetheless must file “reports of conditions” on a timely basis -- failure to do so can lead to de-activation of licenses of all MLOs, loan processors and underwriters sponsored by entity.
- To the extent individual MLO, loan processor or underwriter licensees not required to submit “reports of condition,” they must submit required information to their sponsor for purposes of sponsor’s reporting requirements.

Influencing Real Estate Appraisals (Section 34)

- Causing the value of the appraised property to be based on any factor other than the appraiser’s independent judgment thru coercion, collusion, extortion, bribery, intimidation, compensation or instruction.
- Replaces prior definition which was limited to [1] refusing to pay for a low appraisal or [2] boycotting appraisers whose appraisals were lower than the contract price.



What's in Store for 2013?

The DOB legislative package features a comprehensive bill that would, for the first time, specifically regulate mortgage servicers in Connecticut.

The proposed bill is entitled “*An Act Concerning Money Transmission, Mortgage Servicers and Consumer Collection Agencies.*”

Section 20 would amend section 36a-715 to add, revise and delete certain definitions applicable to the mortgage servicer regulatory scheme.

Sections 21 and 22 would amend Sections 35a-716 and 36a-717, respectively, by replacing the term “mortgage servicing company” with “mortgage servicer”, in accordance with the amended definitions.

Section 23 would amend Section 36a-718 to add a new requirement that a person acting as a mortgage servicer must obtain a license from the Banking Commissioner for its main office and each branch office from which it conducts business unless exempt from licensing requirements, effective January 1, 2014.

Section 24 would add a new section that specifies the application requirements and prerequisites to mortgage servicer licensure by the commissioner -- similar to lender and broker licensing requirements .



Section 26 would add a new section specifying the term of a mortgage servicer license and fees required -- annual license and annual fee of \$1,000.

Section 27 would add a new section specifying the bond requirement of a mortgage servicer licensee -- \$100,000 bond.

Section 28 would add a new section specifying the record keeping requirements of a mortgage servicer licensee.

Section 29 would add a new section specifying disclosure requirements of mortgage servicers upon acceptance of assignment of mortgage servicing rights – including RESPA disclosures and disclosure of range and categories of costs and fees.

Section 30 would add a new section that specifies the standards of care that a mortgage servicer must adhere to -- safeguard money, trained personnel, loss mitigation options and disclosures.

Section 31 would add a new section that makes it a violation of the act if a mortgage servicer fails to comply with federal TILA or RESPA laws and regulations governing mortgage servicing.



Section 32 would add a new section that creates requirements and limitations on the fees imposed on a mortgagor by a mortgage servicer.

Section 33 would add a new section specifying certain prohibited practices (21 of them!) by mortgage servicers and would provide that a violation of the section is deemed an unfair or deceptive trade practice and enforceable pursuant to CUTPA.

Section 34 would add a new section that provides the Commissioner with authority to conduct examinations and investigations in connection with mortgage servicer activity.

Section 35 would add a new section that provides the commissioner with authority to take enforcement action against mortgage servicer licensees and persons who violate the requirements of the mortgage servicing act.

Section 36 would add a new section that provides the Commissioner with authority to adopt regulations under the mortgage servicing act.

Section 37 would add a new section that specifies that the requirements of the act apply to persons who act as mortgage servicers on or after January 1, 2014.



Other possible legislative issues of concern to the mortgage industry in Connecticut include the following bills that were raised but not passed in last year's legislative session:

Senate Bill 407, An Act Concerning the Assigning of Mortgage Debts -- a bill which would have the effect of establishing a requirement that an assignment be recorded when a mortgage debt, rather than the underlying mortgage, is assigned.

House Bill 5430, An Act Eliminating the Requirement That There Be Witnesses to a Conveyance of Land -- a bill which would have the effect of eliminating the current requirement that there be two witnesses to a conveyance of land.

Senate Bill 393, An Act Allowing Insurance Producers to Sell Title Insurance -- a bill which would have the effect of permitting non-attorneys to sell title insurance.

Senate Bill 159, Act Concerning a Repeal of the Provision Authorizing Foreclosure by a Holder of a Note Who Does Not Have Legal Title -- a bill which would have the effect of repealing or substantially modifying the terms of Conn. Gen. Stat. §49-17, which permits the owner of a debt to enforce any mortgage securing that debt.

Other Issues:

- Call report clean up
- Net worth analysis



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