

***Texas Department of Savings and Mortgage Lending Issues
Information on SAFE Act
from Commissioner Douglas Foster, TDSML***

Many of you have witnessed the impact upon lenders in the last few months with the significant changes to RESPA. There are still more changes ahead in the mortgage lending arena for those of us in Texas with implementation, on April 2, 2010, of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) which was signed by President Bush in July 2008 creating the Nationwide Mortgage Licensing System and Registration (NMLSR).

SAFE specifies minimum standards for all states in the regulation of residential mortgage loan originators (RMLO). Fortunately, Texas was one of only two states that already exceeded all of these standards. However, there are also certain mandates that remove flexibility we have provided in the past and significantly expand the range of individuals required to be licensed.

The purpose of this article is to both raise your awareness of the upcoming changes and to seek your continued cooperation in ensuring only properly licensed individuals are providing residential mortgage loans. Unlicensed residential mortgage loan origination is a misdemeanor offense in Texas. Many people who have never been required to be licensed before will need to have completed the licensing process prior to May 31, 2010.

Our agency developed an on-line verification system in 2007 that will eventually migrate completely to the NMLSR; however, we recommend you check our system and NMLSR to verify proper licensing at least through the end of 2010. You can reach the NMLSR website through links from our website home page.

Texans have in the past enjoyed a de minimus exemption for an owner of real property who originated no more than five mortgage loans in a rolling twelve month period. Under the SAFE Act, this exemption no longer applies. There remains an exemption for seller financing of your homestead, or on behalf of direct familial relations, but anyone else who originates a loan or provides seller financing not covered by the two above circumstances, even just once, without being licensed, will be committing a misdemeanor.

The department is concerned that realtors be fully informed of these changes as they may be asked to assist a client in establishing financing terms or paperwork related to seller financing or they may finance the sale of their own residential properties sale financing. Key issues in determining if RMLO licensing is required for a realtor in such situations would include either the forms of compensation or the type of services performed. Before we set up a couple of specific examples let's restate that exemptions only exist if the dwelling serves as the individual's primary residence or if you are providing a loan transaction on behalf of a direct familial relative.

If all of your compensation or gain from the transaction will be in the form of your real estate sales commission and you are earning no other fee and have no interest in the property being sold, and all your actions are to facilitate the closing of the sale, then you do not need to be licensed under SAFE. If, however, you are receiving a separate fee or earning interest on a loan then you may need to be licensed and we request you contact our department to discuss the specifics of the scenario.

As to services provided, your client may ask you to help them with drawing up standard terms or providing template documents for establishing a seller financed loan transaction. If it is their homestead they are exempt from licensure, but if you perform the functions of offering or negotiating rate or terms with the buyer you may have triggered the need to be licensed regardless of whether the property is a homestead or not. For a non-homestead transaction the seller in a seller financed transaction must have a licensed individual perform the loan functions of offering or negotiating rate and terms or become licensed themselves.

Please keep in mind, if the dwelling does not serve as the individual's primary residence or the loan origination service is not on behalf of a direct familial relative, then the individual is acting in the capacity of a residential mortgage loan originator and must be licensed even for just one transaction.

There is significant information and resources available on our website including detailed plans on the implementation and timing of the various licensees' transition plans. Please take an opportunity to review what we offer at **www.sml.state.tx.us** and thank you for joining us in protecting the citizens of Texas in one of their biggest financial decisions.