IDAHO DEPARTMENT OF FINANCE

The Idaho Compliance Connection

A Newsletter Published by the Consumer Finance Bureau of the Idaho Department of Finance for Mortgage Brokers and Lenders, Consumer Finance Companies, Collection Agencies, Escrow Companies and Loan Originators.

FALL 2006

INSIDE THIS ISSUE:

Top 5 Mortgage Violations

Whether you are new to the mortgage industry or a seasoned professional, examinations probably tend to make you nervous. Human error is inevitable, and mistakes will be made, but we hope this article will help you determine what to review. Proactive compliance will not only make you feel more confident during your next examination, but will also expedite the process at examination time. The following is a compilation of the most frequently seen mortgage violations and how you can correct them – today.

1. Insufficient Disclosure of Yield Spread Premiums (YSP). While we rarely see complete non-disclosure of YSP, the range many brokers list on their good faith estimates is often insufficient. Normally, a broker will assume that he or she is safe by disclosing YSP in the 0-4% range, but such a disclosure is actually not meaningful to the borrower. A YSP disclosure should be an accurate representation of the broker's or lender's pricing policy. If a broker typically earns a point on the front and a point on the back of each transaction, then a better YSP disclosure would be .5-2%.

2. Inaccurate Truth-In-Lending Disclosures. Truth-In-Lending disclosures should provide an accurate representation of the consumer's cost of credit. The most frequently seen violation is an inaccurate disclosure of this cost, by either the failure to deduct the appropriate finance charges from the loan amount, or by incomplete disclosure, where required information has been omitted. When the Truth-In-Lending disclosure is provided to the

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Continuing Education Information Available on the Web!

Course criteria, application forms and a frequently asked questions (FAQ) section are now available on the Department's website at:

http://finance.idaho.gov.

The new education section contains information for licensees as well as providers, while the new approved provider section lists contact information for approved continuing education providers.

The first reporting period for continuing education began on November 1, 2006, and will end on October 31, 2008, for licenses issued, or QPIC designations made, prior to November 1, 2006.

TOP 5 MORTGAGE VIOLATIONS CONT'D

borrower, it must be complete and accurate.

3. Documents Signed Incomplete by the Borrower.
Documents outlining specific terms of the loan, for example Truth-In-Lending, Tax Form 4506-T, Rate Lock Confirmation and Servicing Disclosures must be completely filled in before being signed by the borrower. If these items are mailed to a borrower for signature, it is the responsibility of the loan originator to insure the forms are properly filled in before being sent. To avoid this violation, review these documents completely *before* asking your borrower to sign. If there are any blanks requesting information, such as on the 4506-T where it asks for the year or period requested, they must be filled in *before* signatures are requested or attained. The same holds true for the other aforementioned forms.

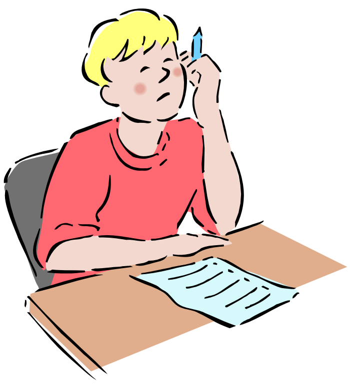
4. No Evidence of Timely - Delivery of Initial Disclosures.
Sometimes it is not possible for an examiner to establish the date the application was initiated, because the original application is not dated or because of a credit pull that came more than three business days prior to the dated application. In these instances, evidence of timely delivery of the initial disclosures cannot be established. To make sure start dates and subsequent disclosure delivery can be established, make sure you are documenting when the application was mailed, received or taken by either phone or face-to-face communication. If you are pulling credit in order to prequalify a candidate, it is helpful to note this in your conversation log to establish loan origination.

5. Missing Disclosures
It is the responsibility of the loan originator to make sure borrowers receive the required initial disclosures. We often find that a forms packet is sent to the borrower, but the copies of the disclosures required to be maintained in the file are missing. Often the missing disclosures are the Idaho specific disclosures, including the Mortgage Loan Origination Agreement, Interest Rate Float/Lock Disclosure and the Idaho Prepayment Penalty Disclosure. In addition to these forms, we also frequently see no evidence that licensees are delivering a Rate Lock Confirmation to borrowers at the time the interest rate is locked with the lender. Such confirmation must be completed and delivered to the borrower within three days of the interest rate being locked.

Each of these violations is easy to cure. A simple self-audit will show if your company has any of these violations in practice, and can help you see where more training may be required.

Examiners recommend that licensees contact the Department with any questions or concerns regarding items discussed in this article .

"A simple self-audit will show if your company has any of these violations…"



WELCOME OUR NEW STAFF!

Billie Kay joined the Bureau in 1996 and was recently promoted to a Consumer Credit Examiner/ Investigator. Her extensive experience with both the Collection Agency Act and the Idaho Credit Code make her an asset in conducting investigations and field examinations.

Holly Frenette joins the Bureau as a Consumer Credit Examiner/Investigator and will be dedicated to conducting field examinations and investigations. Ms. Frenette worked with SunTrust Bank in Savannah, GA before joining the Bureau in March.

Tom Little brings to the Department more than a decade of banking experience as well as more than 20 years experience as an entrepreneur. He will be working as a Consumer Credit Examiner/ Investigator.

Tiffany Faylor joins the Bureau as an Administrative Assistant in our licensing section and will be dedicated to Regulated Lender and Collection Agency licensing.

Naomi Carr joins the Bureau as an Office Specialist and recently completed her Associate Degree in business. She gained experience working with the Tax Commission and Department of Fish & Game before joining the Department in May, and is dedicated to Loan Originator licensing.

Did you know…

As of October 31,2006, the Bureau has processed 2,517 loan originator job changes since January 1st

The Bureau has received 6,004 loan originator applications and has 4,230 active loan originator licenses issued since January 1, 2006.

Top Consumer Complaints

Mortgage Brokers/Lenders:

Loan origination—

- Borrowers did not understand loan product,
- unclear disclosures,
- failure to make disclosures
- unlicensed activity.

Loan servicing—

- Inaccurate posting of payments
- payment amount insufficient, resulting in large late fees or foreclosure, tax or escrow disputes.

Collection Agencies;

- Collecting against incorrect person. Calling on debt of family member, name of debtor same as person being called, and ID theft (ID theft being seen more frequently).
- General Collection Practices (Valid Debt)—calling at work, collector unwilling to accept partial payment or enter into a payment arrangement, harassment and failure to provide debt validation when requested.
- Unlicensed activity.

Regulated Lenders (Includes Payday and Title Lenders):

Servicing Issues—

- Collection by 1st party creditor, (especially calling family member looking for debtor)
- privacy violations
- advertising and contract issues.
- Unlicensed activity.

"But there were at least six inches of documents to go through...no, I did not read them before I signed!"

Enforcement Actions Mar 1 - Sept 31

Collection Agencies:

Bannock Collections, 5/15/2006
Order to Cease & Desist collection activity.

Rickenbacker Collections, 8/7/2006
Agreement & Order—paid $5,000 penalty for operating without a valid permit.

Escrow Companies:

Federal Trust Escrow, 6/21/2006
Order to Cease & Desist for company misrepresentation.

Banker Trust Escrow, 6/16/2006
Order to Cease & Desist for company misrepresentation.

Mortgage Loan Originators:

Ken Crandle Wilson, 5/3/2006
Order of Denial of Mortgage Loan Originator License.

Debbie Langer, 7/14/2006
Order of Denial of Mortgage Loan Originator License.

"No, we did not understand the loan product, but we had to sign the documents or we would lose the home of our dreams!"

Fraud Alert: Identity Theft Ring Targets Real Property

October 9, 2006

For the last few months an identity theft ring has been wreaking havoc on property owners, mortgage lenders and the title insurance industry. This is an international scheme in that many of the suspects appear to be of Eastern European origin and much of the stolen money is being wired to accounts in Greece, the Slovak Republic, Russia, Latvia and elsewhere.

The scheme involves absentee-owned property and includes both vacant land and improved residential and commercial properties. In most of the cases reported, the true owners reside outside of the State of Florida. Additionally, in some of the cases, the properties are listed for sale through the local Multiple Listing Service.

The Refinance Scheme

The perpetrators of this scheme assume the identity of the real property owner and obtain a physical mailing address (always a "mail drop location") in the community near the residence of the real property owner. They then contact a mortgage broker or lender as well as a title agent to originate and close the new loan using the identity of the real owner. In most cases the properties are owned free and clear of any liens or mortgages of record.

After receiving loan approval from a mortgage lender, the perpetrator then contacts the title agent and request they either transmit the closing documents to a "free e-mail address"or the mail drop address. After the executed closing documents have been returned to the title agent, the perpetrator provides written instructions for the agent to wire the loan proceeds to bank accounts held outside the United States, mostly in Eastern European countries. Investigation reveals these accounts are opened with fraudulent identification and that the entire amount of the loan proceeds are quickly withdrawn in cash.

At or about the same time the perpetrators are trying to refinance the victim's property through one lender and title agent, they are attempting to borrow a similar amount from a different lender using the same property as collateral. A different title agent is used for this second loan. It is important to note that both refinance closings occur at or about the same time (in the gap) so neither settlement agent is aware of the other closing until after the funds have been disbursed and the money has left the country.

<u>Similar Characteristics:</u>

1. All contact with the perpetrators is by telephone or e-mail. There is NO personal contact. They will refuse to attend a closing or come by the office to pick up a check.

2. They are requiring the settlement agent to execute a letter agreeing that they will wire the proceeds from the closing to bank accounts held outside the United States.

3. All contact addresses provided are "mail drop box" locations.

4. All telephone numbers provided are pre-paid cell phones and are untraceable.

5. All identification provided are fraudulent driver's licenses and do not bear the likeness or resemblance to the identity theft victim.

6. The proceeds from each of the closings exceed $300,000.

<u>Claims Prevention:</u>

1. Do not e-mail or mail closing packages to addresses that cannot be verified. In these cases please use a courtesy closer in the area near the borrower. This will ensure personal contact with the seller or buyer.

2. If the amount of the wire is in excess of $100,000.00: Do Not Wire the proceeds to any bank outside the United States without prior written approval of your title insurance underwriter.

Please call Information Data Services immediately if you are confronted with this type of scheme.

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Top 5 Collection Agency Violations

1. Failure to Remit client funds within 30 days of the end of the calendar month.

Department examiners typically find that this issue occurs when the collection agency closes its books early on the last day of the month. In this scenario a collection agency will frequently post debtor payments on the day immediately following the actual day received. As a reminder, collection agencies licensed in Idaho are required to post payments on the day received during the posted hours of operation. The Department recommends that collection agencies complete the trust remittances on the next business day to avoid potential violations.

ICAA §26-2234(6)

2. Posting of Payments and Record Retention.

Department examiners are finding that when collection agencies fail to post debtor payments on the day they are received, multiple violations can result. By not crediting the payment on the day received, unearned interest accumulates on the debtor's account. The action can also result in payments not being remitted to credit-clients within the required 30-day time frame following month-end.

Lastly, improper posting of payments affects the record retention requirements within the Idaho Collection Agency Act. ICAA §26-2234(5-6)

3. Charging Unauthorized Attorney Fees on consumer loan accounts in which the principal is $1,000 or less.

Although Idaho collection agencies are allowed to have payday or regulated lenders as clients, the Department cautions that Idaho law does not allow for the imposition or collection of attorney fees on any regulated consumer loan of $1,000 or less (Idaho Code §28-43-311). In Idaho, payday loans are required to be $1,000 (principal) or less and are defined as regulated consumer loans even though a check is used as collateral. Therefore, first and third-party collectors may not seek attorney fees against debtors whose debts are based on payday or other regulated consumer loans of $1,000 or less.

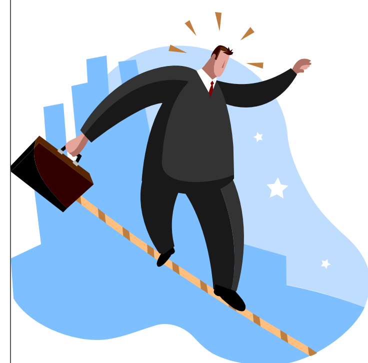
4. Improper use of Trust and Operating Bank Accounts.

Department examiners are finding trends where collection agencies are not correctly using their trust and operating accounts. Trust accounts are only to be used for the receipt of debtor payments and client remittance and operating accounts are only to be used for business funds and business expenses. The examiners are finding many instances where collection agencies are using their business operating accounts to pay for personal expenses, making ATM or cash withdrawals without documentation of a business purpose, and making electronic debits for non-business related transactions. As a reminder, the only allowable debit or fee allowed out of the trust account, other than the agency fair share transfers, are merchant service fees on credit/debit card payments. Idaho Code §26-2233(1-2)

5. Charging fees for credit, debit, or pay by phone payments.

Department examiners are finding that some agencies are imposing a fee on debtors to make payments over the phone using their credit card, debit card, or checking account. The only allowable fees are contracted or collection rate interest, and judicially determined fees such as legal rate of interest, attorney fees, court costs, and NSF Fees. Idaho Code §26-2229(A)(3)

Examiners recommend that collection agency representatives contact the Department if they have questions regarding any of these issues.



"...the Department cautions that Idaho law does not allow for the imposition or collection of attorney fees on any regulated consumer loan of $1,000 or less."

Did you know...

Bureau examiners have participated in 26 consumer education conferences, high school and college financial education training programs since January 2006

"Quotable Quotes..."

Payday applicant: "We don't do payday loans. They just write us a check and we deposit it 2 weeks later."

"Ummm...I'm filling out your application and the bottom says 'My Commission Expires'...what does that mean? My commission doesn't expire, it's my payment."
(In reference to the Notary Commission Section)

Simple Ways To Expedite Your Application

- Read all the instructions carefully.
  - The application forms changed this year – read each section thoroughly to avoid missing any new information.
  - Gather all the attachments together before you submit.
  - Partial application submissions will slow down the application process. Many applicants will submit information separately. The fewer times an application has to be reviewed the closer you are to approval. When all the information comes in at once, your chances for approval on a first-time review are greater.
  - Fill in all the blanks.
  - If a particular question does not apply to your company, fill in the blank with an “N/A”.
  - Provide detailed job descriptions if you have to submit a résumé for the Control Person or QPIC.
  - Résumé submissions are a very common deficiency item on applications. We are geared as a society to write résumés in a specific format to include brief descriptions of our duties. For licensing applications, we have to throw all our previous notions about résumés out the window. Here are a couple of hints at writing a résumé designed to evidence your experience in an industry:
    - Volume of sales and accomplishments are not sufficient to evidence experience.
    - Provide a listing and description of your specific duties with your employers.
    - Avoid generic descriptions. For example, “manages” is not sufficient to evidence experience. (What actions do you perform as a manager?)
    - Titles alone are not sufficient.
    - Ask questions.
  - The Licensing Examiners and Staff are available to answer any questions you may have about your application before you submit. The most common reason for delays in the application process is incomplete information. If you have any questions about the application or information needed to complete your package, call the licensing staff for help.

IDAHO DEPARTMENT OF FINANCE

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We're on the Web!
http://finance.idaho.gov

Idaho Department of Finance

Protecting the Integrity of Idaho Financial Markets Since 1905

The Department is moving to its new location on Friday, November 17th at the Washington Group Plaza.

Computers and voice mail will be down on Thursday, November 16th, packing will be accomplished on Friday, November 17th, unpacking with computer and phone hook-ups on Monday, November 20th.
The Department expects to fully re-open for business on Tuesday, November 21st.

The Department's new address is:
800 Park Blvd, Ste 200
Boise, ID 83712.

The P.O. Box mailing address and phone numbers will remain the same.

Important Dates to Remember!

Renewals & Annual Notifications	Last Date to Complete
Mortgage Loan Originators	October 31st
Collection Agencies/Foreign Permittees	March 15th
Regulated Lenders (Includes Payday & Title Lenders, as well as Dual-Licensed Mortgage Lenders with this License).	May 31st
Escrow Companies	April 30th
Mortgage Brokers & Lenders	August 31st
Annual Reports of Activity:	
Collection Agencies/Foreign Permittees	March 15th
Regulated Lenders	May 31st
Mortgage Brokers & Lenders	August 31st