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INFORMATION BULLETIN 2010-01 (OL)

TO: **Manufactured Home Manufacturers and Dealers**
Commercial Modular Manufacturers and Dealers
Approved Course Providers and Instructors
Interested Parties
Division Staff

SUBJECT: MORTGAGE LOAN ACTIVITY LICENSING REQUIREMENTS; SAFE ACT

The purpose of this Bulletin is to announce that Senate Bill (SB) 36 (Calderon, Chapter 16, Statutes of 2009) took effect on January 1, 2010. Under this new law, any person who acts as a dealer or salesperson as defined in the Department of Housing and Community Development (HCD) Occupational Licensing Program (OL) and also acts as a "Loan Originator" (as defined by SB 36; see the definitions below) in relation to the sale of manufactured homes (including mobilehomes, multi-family manufactured homes, and commercial modulars) is required to obtain either a Department of Real Estate (DRE) or Department of Corporations (DOC) lender license, or both, depending on the type of loan involved (personal or real estate).

SB 36 is intended to produce compliance with the federal Secure and Fair Enforcement Mortgage License Act (SAFE Act) of the Housing and Economic Recovery Act of 2008 (Public Law 110-289). An HCD-OL licensee is <u>not</u> required to register under the SAFE Act if its activities are limited to manufactured home sales only, without any financing or assistance in obtaining financing.

Information on Federal and State Law
Under the SAFE Act, an individual may not engage in the business of a "loan originator" unless he/she has a federal or state license and is in the Nationwide Mortgage Licensing System and Registry (NMLSR).

"Loan originator" generally is defined as any individual that takes a "residential mortgage loan application" and offers to negotiate a loan. (Real estate brokers not doing loans are excluded.)

"Residential mortgage loan" generally is defined as a loan for personal or family use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a "dwelling" as defined by United States Code, Title 15, Chapter 41, section 1602(v), which includes "mobilehome."

> *The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.*

SB 36 followed the SAFE Act by including the following definition in both the California Business and Professions Code (BPC), section 10166.01(d) and the California Financial Code (FC), section 22012(e):

> *"**Residential mortgage loan**" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling. "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.*

"Mortgage loan originator" is defined in both BPC section 10166.01(b) and FC section 20013(a). Note: Below is an excerpt of the BPC language. The FC language is similar.

> ***"Mortgage loan originator"** means an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain. An individual real estate licensee acting within the meaning of paragraph (d) of Section 10131 is a mortgage loan originator for purposes of this article with respect to activities involving residential mortgage loans.*
>
> ***Mortgage loan originator does not include any of the following:***
> *An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as otherwise provided in subdivision (c) of Section 10166.03. The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.*

Additional Information on Licensing
If a manufactured home, mobilehome, multi-family manufactured home, and commercial modular dealer or salesperson is engaged in the activities of a mortgage loan originator, as defined, the person is required to obtain either a DRE or DOC license in addition to the HCD license.

If you are a HCD licensee and found to be in violation of the provisions of SB 36 and the SAFE Act, you may be subject to administrative, civil, and/or criminal sanctions.

For more information concerning the SAFE Act, or obtaining license approval from DRE or DOC, you may contact the following departments:

California Department of Real Estate
http://dre.ca.gov/lic_sb36_safe.html

California Department of Corporations
http://www.corp.ca.gov/FSD/SAFE/default.asp

U.S. Department of Housing and Urban Development
http://www.hud.gov/offices/hsg/ramh/safe/smlicact.cfm

This summary of legislative changes is not represented to be a complete digest of all new requirements in SB 36 or the federal SAFE Act and their impact on persons acting as dealers or salespersons or as "loan originators" as those terms are defined. More information on California laws may be obtained from www.leginfo.ca.gov.

Kim Strange
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