An Overview of the Federal Mortgage Lending Law

LORMAN®

Published on www.lorman.com - January 2018

INTRODUCING
Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you UNLIMITED access to Lorman's ever-growing library of training resources:

- ☑ **Unlimited Live Webinars** - 120 live webinars added every month
- ☑ **Unlimited OnDemand and MP3 Downloads** - Over 1,500 courses available
- ☑ **Videos** - More than 1300 available
- ☑ **Slide Decks** - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.

Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

An Overview of the Federal Mortgage Lending Law

In the United States, the federal government enacted five federal mortgage lending laws. Each law was designed to protect mortgage loan consumers. They provide guidelines, procedures, rules, and regulations ensuring that all consumers have a fair and equal opportunity in terms of mortgage lending and loan applications. The five laws are the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Fair Housing Act, the Fair Credit Reporting Act, and the Truth In Lending Act.

The Equal Credit Opportunity Act (ECOA), established in 1974, guarantees equal opportunity to all consumers from creditors. It is a law prohibiting creditors from discriminating against applicants on the basis of religion, race, color, sex, nationality, age, and marital status. In addition, an applicant cannot be discriminated against if they receive public assistance, but the income being received may be verified.

In accordance to this law, creditors cannot inquire about these factors and cannot use them in order to determine any lending decisions. The only exception to this is mortgage loans where these factors may be inquired about. This law applies to each aspect of credit transactions and must be followed by all credit decision participants, including financial institutions such as banks, bankcard companies, loan companies, credit unions, retail stores, and finance companies. A creditor must approve or reject an application within thirty days from when the completed application was filed. If an application is rejected, the applicant has sixty days to ask why they were rejected. Creditors must provide specific reasons for the rejection and avoid vague explanations.

The ability for consumers to repay debts is a legitimate concern to creditors. Although marital status need not be disclosed, information related to alimony payments, child support payments, and maintenance payments may be required. This applies both to customers who are receiving such payments or making these payments.

The ECOA also addresses home appraisals for mortgage loans. A home appraisal is a professional evaluation of the worth of the property used by mortgage lenders. It guarantees the property is worth the mortgage amount. A lender must give a copy of the home appraisal to the applicant if they request its documentation. Also, an applicant can be held liable for the cost of a home appraisal whether or not their loan was approved.

Noncompliance with the Equal Credit Opportunity Act may result in civil liability, punitive damages, individual action suits, and class action suits. These penalties carry fines that vary per case. The fine for individual action suits is typically in the thousands of dollars, where $10,000 is usually the maximum. For class action suits, the fine is typically in the hundreds of thousands of dollars or one percent of the creditor's net worth.

The Real Estate Settlement Procedures Act (RESPA), established in 1974, is a statute that protects prospective homeowners by enabling them to be informed consumers. It requires creditors to provide extensive information to customers during the loan settlement process. If a consumer applies for a mortgage loan, the credit lender must give them certain types of information during the time of application, such as a special information booklet (which outlines different real estate settlement services), a good faith estimate (pertaining to settlement costs/charges), and a mortgage servicing disclosure statement. A mortgage servicing disclosure statement explains whether the consumer's loan will be serviced by the current credit lender or transferred to another lender. It also provides information in regard to complaint resolution. If these pieces of information are not given to the consumer at the time of the loan application, the creditor must mail documents containing this information to the consumer within three business days of receiving the application. However, this does not apply if the lender rejects the loan within the three day, meaning they do not have to provide such documents.

Certain disclosures must be made to the consumer before, during, and after the settlement process. Before a settlement occurs, the affiliated business arrangement disclosure (describing creditor fee estimates) and settlement statement (a standard form outlining fees) must be given. During a settlement, another settlement statement must be given (outlining the loan transaction settlement costs), however in some cases this can be mailed shortly after the settlement. The initial escrow statement (a document listing insurance premiums, estimated taxes, and other charges related to Escrow accounts within the first year of the loan) is typically given during a settlement, but it can also be given within 45 business days after the settlement. After a settlement, an annual escrow statement (a yearly summary of all escrow account payments, deposits, shortages, surpluses, and recommended action to be taken in relation to them) and a servicing transfer statement (a document containing information on loan transfers, payment acceptance dates, and the contact information of the creditor handling the transfers) must be given. The servicing transfer statement is only required if the original creditor assigns the servicing rights of the consumer's loan to another creditor.

Under this act, if a consumer believes an error has been made in their mortgage account, they have the right to make a qualified written request. This request identifies the name and account of the consumer and includes a statement explaining why they believe there are account errors. Once submitted, the creditor has sixty business days to act upon the request, but must acknowledge the submission within twenty business days. The creditor must either provide a written explanation detailing why the account is correct or that the errors from the request have been corrected. In either case, the creditor must provide contact information to the customer so they can further discuss the matter if needed. Failure to comply may result in the creditor being fined up to $1000 in damages in addition to the actual damages consumers are entitled to.

The RESPA prohibits parties such as lenders, construction companies, real estate agents, and title insurance companies from providing undisclosed kickback payments to one another. This serves two purposes; one being the ceasing of cost inflation of real estate transactions, and the other is to promote competitive rates without false advertisements.

The Fair Housing Act, established in 1968, prohibits housing providers (homeowner insurance companies, lending institutions, banks, real estate companies, municipalities, and landlords) from discriminating against consumers on the basis of religion, color, race, national origin, sex, marital status, and disability. Discriminatory actions included refusal to sell or rent housing, refusal to negotiate, denying the actual status of housing availability, purposefully making housing unavailable, setting different terms/conditions/privileges, blockbusting (persuading an owner to sell), threats, coercion, and intimidation. Any type of prejudiced persuasion or advertising is also considered as discriminatory actions. This act also presents the procedures for handling discriminatory complaints.

This act defines those with disabilities as individuals with physical or mental impairments that significantly limit one or more regular daily activities. Conditions such as hearing impairment, vision impairment, mobility impairment, chronic fatigue, HIV infection, and head injuries are considered physical impairments. Conditions such as mental retardation, learning disabilities, mental illness, drug addiction, and alcoholism are considered mental impairments. Regular daily activities refer to breathing, hearing, seeing, walking, speaking, learning, working, manual task performance, and caring for one's self. This act also defines discrimination against those with disabilities as failing to design and construct multi-family dwellings with certain accessibilities. Specifically, this applies to wheelchair accessibility. Multi-family dwellings containing four or more units must be able to accommodate wheelchairs with an accessible route, entrance, public area, common area, and doors wide enough for wheelchairs to pass through. If these dwellings fail to comply with these requirements, building owners and the architects that designed the building may be held liable. Also, building owners may not refuse to make reasonable accommodations to their practices, rules, and policies that are necessary to an individual with a disability. An example of this is if a visually impaired individual requires a guide dog, a building owner cannot ask the individual to not allow the dog on the premises even if the building has a no pet policy. Another example is a building owner must honor the request of a disabled person requiring a parking space near their apartment for their accessibility.

Under the Fair Housing Act, if a consumer believes they have been discriminated against in regard to home improvement loans or mortgage loans, they have the right to file a lawsuit. If a consumer claims the threat of force or actual force was used by against them, criminal proceedings may occur. In addition to filing their own lawsuits in either state or federal court, consumers may also file their complaints with the Department of Housing and Urban Development (HUD), who may then refer the complaint to the Department of Justice. Racial discrimination claims make up the majority of these discrimination cases, so this act also applies to uncovering and prosecuting acts of hidden racial discrimination, such as providers purposely giving false information regarding housing availability or misdirection.

The Fair Credit Reporting Act (FCRA), established in 1970, regulates access and credit information in consumer credit reports. Its purpose is to ensure accuracy, fairness, and the privacy of personal information pertaining to the files held by consumer reporting agencies (such as financial agencies and credit bureaus). It gives consumers the right to ask for their credit score (a numerical summary representing how worthy of credit they are based on information provided by credit bureaus), be notified if their file has been used against them, verify the accuracy of their credit report (for employment purposes), remove outdated negative information such as late payments/tax liens/judgments that are at least seven years old (or ten years old in the case of bankruptcy), and an annual free file disclosure from each major credit bureau. It also gives consumers the right to correct or dispute any inaccurate or incomplete information. Agencies are required to delete or correct incomplete, inaccurate, or unverified information typically within thirty days. If a consumer disputes negative information in their report and it is removed as a result, the negative information cannot be reinserted into the report without written notification to the consumer within five days. Also, it requires that any individual requesting a consumer's credit report must have permission to do so before it is released to them. The Federal Trade Commission is the enforcement authority for this act.

Under this act, if an individual uses a consumer's credit report to deny their application for insurance, employment, or credit, must notify the consumer and provide the name, address, and contact number of the agency that supplies the report. The act also allows consumers to have the right to know what information is in their file. They may go to a reporting agency and obtain all data in their files providing they have the proper identification. In addition, they may access their credit report free of charge once a year from a nationwide consumer reporting agency (an agency that maintains insurance claims, medical records/payments, employment history, residential/tenant history, and check writing history files).

This act covers background checks conducted by employers, a typical practice businesses use before hiring a potential employee. A background check is considered a consumer report under the FCRA. An employer may check a job applicant's credit report, past employer, and criminal report by using a third party. However, before accessing this information, employers must first notify consumers and get their written consent in order to do so. If an employer chooses not to hire an individual based on information in their report, they must provide a copy of the report and the applicant's rights. They must also disclose the name and address of the agency that provided the report and the applicant's right to dispute information contained in the report. If these requirements are not followed, civil liabilities may occur with a collection of actual damages or a fine ranging from one hundred dollars up to one thousand dollars in addition to punitive damages and other legal fees.

The Truth In Lending Act (TILA), established in 1968, is an act implemented by the Federal Reserve designed to protect consumers and creditor lenders in credit transactions. The purpose is to require creditors to provide standardized information to consumers that allow them to conduct knowledgeable loan term comparisons. The act requires that certain pieces of information must be disclosed to a consumer prior to a creditor extending credit. Specifically, the annual percentage rate (APR), finance charges, amount financed, total costs and payments, consumer rights, and the term of the loan must be disclosed. This act does not regulate the fees imposed on consumer credit, with the exception of certain higher cost mortgage loans. It also covers record retention, rate limitations, state exemptions, effects on state laws, certain oral disclosures, and Spanish language disclosure (required in Puerto Rico only).

The information must be clearly written and be fully explained on loan documents prior to being signed. Commercial lenders, such as banks, mortgage brokers, and loan institutions, must give consumers precise information on interest rates. They must also grant a three day period allowing consumers to consider and compare the competitive terms of the loan agreement in order to decide whether they wish to cancel the agreement. This information may also be required on regular billing statements. In addition, if a credit is required to be repaid in more than four payments, it must be clearly documented that the cost of credit is incorporated in the quoted price of the service.

The TILA applies to most types of credit, such as open-ended credit (credit card accounts, home equity credit lines) and closed-end credit (auto loans, fixed term motor vehicle loans, home loans/ mortgages). It also regulates which companies may advertise and discuss the benefits of their services and loans. A creditor cannot advertise deals that are typically unavailable to consumers, with the exception of preferred consumers. Also, advertisements must contain either all terms of credit transactions or no terms. The advertising regulations only extend to prospective creditors; it does not regulate advertising media.

These five acts establish fair practices between consumers and financial institutions, such as banks, lending institutions, and mortgage brokers. It is important to note the role of mortgage brokers in their relationship with consumers. Mortgage brokers issue loans to both individuals and businesses. They locate banks and credit lenders for consumers who are actively seeking a specific type of loan. They may be involved in retail banking (for individuals and small businesses), business banking (for mid-market businesses), corporate banking (for large businesses), mortgage lending banking (originates and services land loans), private banking (provides wealth management for individuals/families with a high net worth), and investment banking (financial market activities). They use marketing to attract consumers, assess credit histories/markets/affordability to accommodate consumer needs, file applications for pre-approved lender agreements in addition to helping complete them, file necessary financial documents, explain legal disclosures, submit necessary materials to lenders, and uphold a duty to try to save money for consumers by providing advice.

It is also important to note that there are differences between mortgage brokers and loan officers. A loan officer may be an agent of a mortgage broker. A mortgage broker works as an agent between consumers and lenders, whereas a loan officer works directly with lenders. Mortgage brokers are licensed and are registered with the state, while loan officers are licensed by banks or direct lenders. Both are subject to personal liabilities to prevent fraud and must fully disclose loan terms to lenders and consumers.

These acts also serve to help prevent mortgage fraud and predatory mortgage lending, which typically occur separately, but they can also occur at the same time. It is important to be aware of the practices that fall under each.

Mortgage fraud occurs when any individual (a consumer or broker) willingly submits false information to a financial institution, thereby defrauding the institution. There are several types of mortgage fraud. Occupancy fraud occurs when a consumer obtains a mortgage for an investment property, but claims they will occupy the residence as their primary residence on the loan application in order to obtain a lower interest rate and to avoid paying taxes on gains. Income fraud occurs when a consumer overstates their income in order to obtain a larger loan amount for a mortgage. Employment fraud occurs when a consumer claims they work in a higher position at a company than they actually do, or claim they are employed by a company that is actually non-existent. The failure of a consumer to disclose liabilities (such as other mortgage loans or credit card debt) in order to lower their debt-to-income ratio and increase their eligibility for a mortgage loan is also a form of mortgage fraud. Appraisal fraud occurs when the appraised value of a property is deliberately understated (the consumer can obtain a lower price on foreclosed homes) or overstated (the consumer can unjustly obtain more money from cash-out refinancing). Identity theft is also a form of mortgage fraud and occurs when a consumer assumes the identity of another person in order to obtain a mortgage.

Predatory mortgage lending occurs when a financial institution willingly misleads/ deceives a consumer. This extends to consultants, executives, and processors of financial institutions. Examples of predatory lending include providing false information on documents such as asset and income documentation, influencing inflated appraisals and higher loan amounts, advising a consumer to refinance a loan where there is no benefit to do so, nondisclosure of premiums and hidden costs before a settlement occurs, and purposely making monetary gain based on a consumer's ignorance of mortgage attainment. There are various predatory lending practices.

Unjustified risk-based pricing occurs when a lender charges higher interest rates and fees for extending credit to higher risk credit consumers. Single-premium credit insurance occurs when insurance intended to pay off loans for a deceased homebuyer is purchased. Another predatory lending practice is the failure to present a loan as negotiable. This occurs when a lender knowingly allows a consumer to remain unaware of their ability to negotiate. Failure to disclose terms or change terms once a document has been signed are also predatory lending practices. These acts help regulate the transactions between consumers and financial institutions.