

What We've Been Fighting For

FAMB has offered lawmakers insights into changing mortgage-industry rules

By **Valerie Saunders**, president, Florida Association of Mortgage Brokers

THIS YEAR'S LEGISLATIVE SESSION has been a long haul for members of the Florida Association of Mortgage Brokers (FAMB). We have seen more proposed legislation at the state and federal levels aimed at inhibiting mortgage brokers than perhaps ever before.

Because of this, FAMB wishes to share with our colleagues and fellow industry professionals the legislative challenges we have faced and the ways we have succeeded in keeping our industry strong in Florida. Hopefully, these insights will help others as they attempt to defend the profession.

Here is a breakdown of some of the various rulemaking that has taken place and FAMB's associated opinions and reactions.

S.A.F.E. Act

The national Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act passed in July 2008 as part of the Housing and Economic Recovery Act. To provide uniform license applications and reporting requirements for state-licensed loan originators, the act established a National Mortgage Licensing System registry administered by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR).

The S.A.F.E. Act created two categories of loan originators: federally registered loan originators and state-licensed loan originators. Both categories require originators to become part of the registry, provide annual fingerprinting, submit to federal background checks and complete eight hours of continuing education annually.

State-licensed loan originators, however, also must submit to a state background check, complete 20 hours of preclosure education, pass a

nationally mandated test, pass a state-mandated test, and have a credit report pulled in order to show financial fitness and responsibility.

FAMB is in favor of the grandfathering in of preclosure-education and state-testing requirements for currently licensed brokers who must transition to the new state loan originator license in 2010.

In 2008, CSBS and AARMR provided a model law to the states to help them implement the S.A.F.E. Act's minimum standards in their own lending laws. While the S.A.F.E. Act provides discretion to the state legislatures, as opposed to a one-size-fits-all prescription for the licensing of mortgage originators, the CSBS/AARMR draft removes that flexibility. As a result, it does not consider the existing licensing requirements in Florida. CSBS and AARMR have favored the grandfathering in of preclosure education but have been silent on the issue of grandfathering in state-testing requirements for brokers licensed now.

FAMB has made Florida legislators aware that the S.A.F.E. Act as it stands allows it the flexibility to fit with existing Florida requirements for licensure. Florida mortgage brokers, in order to renew their licenses on Aug. 31, must have completed at least 14 hours of continuing education in the past two years. This education must include at least four hours of Florida mortgage law and at least 10 hours of mortgage-industry courses, as required under Florida Statute No. 494. Brokers also must pay the state a required fee of \$150.

Having to go through this licensing process again will be duplicative of the standards already in place in Florida and costly to brokers at a time of economic strain.

FAMB has been diligent in informing state

regulators and legislators that CSBS and AARMR have recommended grandfathering-in provisions for currently licensed brokers with regards to the preclosure education requirement and that Florida still will be in compliance with the S.A.F.E. Act.

Re-establishment of a guaranty fund

In addition to the educational requirements created by the S.A.F.E. Act, each state must implement one of the following three options on state-licensed originators and businesses:

- A net-worth requirement
- A surety-bond requirement
- A guaranty-fund requirement

The Florida Office of Financial Regulation (OFR) chose to reinstate the mortgage-guaranty trust fund. Florida used to have a mortgage-guaranty fund that all licensees paid into. But the collection was discontinued after 1991.

After evaluating each of the three options available, FAMB agreed with OFR's choice and feels that the guaranty-fund option is the most appropriate for licensed brokers and loan originators.

The guaranty fund would act as a consumer safety net. If a consumer experiences a financial hardship or loss due to fraud initiated by an unscrupulous mortgage originator, the consumer could file a claim against the fund to recoup the loss, potentially.

The fund will draw upon a portion of licensing fees. The collection of these funds will begin with the 2010 licensing period. Each individual licensee will be required to pay \$20 into the fund, and each mortgage brokerage and mortgage-lending business will be required to pay \$100 into the fund. Collection will continue annually until the fund reaches \$5 million.

Stricter preclosure requirements

FAMB strongly encourages the OFR and the Florida Legislature to consider strengthening



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the prelicensing requirements for brokers and originators. Applicants for a Florida mortgage-broker license must:

- **Be at least 18 years old;**
- **Have a high school diploma or its equivalent;**
- **Submit an application with the appropriate fee;**
- **Provide a fingerprint; and**
- **Complete a 24-hour prelicensure course and pass the state exam.**

If licensed brokers wish to become principal brokers of mortgage brokerages, the only additional requirements are to submit an application with the appropriate fee and to provide proof that they actively have been licensed as a Florida broker for at least one year — or demonstrate that they actively engaged in a mortgage-related business for at least a year.

In comparison, there are stricter state requirements for real estate sales associates who want to become brokers. In addition to basic sales-associate requirements, applicants for a real estate broker license must:

- **Complete and pass the state-approved 72-hour broker prelicensure course;**
- **Hold an active sales-associate license for at least 24 months out of the past five years; and**

■ **Complete applicable post-licensure education and pass the state exam.**

Recent changes to Florida Statute No. 494 have revised the prelicensure-education requirements for mortgage brokers to 20 hours beginning in October 2010. FAMB, however, believes that prelicensure-education hours should be strengthened.

There also should be more-stringent requirements for licensees who wish to become brokerage principals. These requirements should include additional principal prelicensing education, a longer licensure requirement and the passing of another state exam.

In addition, post-licensure continuing education reflects a tremendous disparity between licensed mortgage brokers and licensed real estate professionals. For newly licensed mortgage brokers, 14 hours of continuing education is required for license renewal except when their first license renewal falls within 90 days of their original date of licensing, in which case the 24-hour prelicensure course fills the post-licensure requirement.

For licensed real estate sales associates, on the other hand, 45 hours of post-licensure continuing education is required during the 18- to 24-month timeframe between initial licensure and their first license renewal period. In addition, for licensed real estate brokers, 60

hours of post-licensure continuing education is required during the 18- to 24-month timeframe between initial licensure and their first license-renewal period.

FAMB recommends that a stringent post-licensure continuing-education requirement be imposed on all new mortgage-broker licensees. This should closely resemble the requirements placed on real estate professionals.

The first 24 months of licensure are critical for new mortgage professionals, and FAMB would like to see continuing education play a more active role in shaping new licensees.

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FAMB hopes that legislators in Florida and around the country strike a balance between protecting consumers and treating the industry in an appropriate manner. These legislators must know how they can do this.

Whether you're part of a broker trade association or not, we all must call on our elected officials and do our part to make sure that what they perceive as solutions actually reflect our reality and serve our common interest. 