

NYAMB President's Message

By: Mark Favaloro, June 2018

Here we are nearing the end of the 2nd quarter and so much is happening in the Mortgage Broker community. I know you are all very busy with purchase money mortgages now that the rates have risen. For those brokers that have been in the refinance business for the past few years it is time to start developing and or rekindling your relationships with the Real Estate Agents. This has always been a challenging part of the job as we all are vying for the same business. The competition is heavy and not everyone always plays fair so get ready for the rest of 2018 by staying in touch with NYAMB as we begin to bring new member services and programs to you to enhance your bottom line and grow your business! Of course, we will continue, as always, to represent you on the front lines in Washington DC and NY State on the issues that concern you most.

On the New York State legislative front, the NYAMB Legislative Committee traveled to Manhattan this quarter with to meet with the NYS Dept of Financial Services, Deputy Superintendent, Rholda Ricketts and her Assistants regarding the 6 issues that brokers across New York State have asked us to address. I will enumerate the items and give a brief explanation of the issue and the proposed possible solutions that are being considered.

1) Violations of RESPA regarding unfair marketing agreements that put Mortgage Brokers on an unfair playing field when competing for a Real Estate Agent's business. Proposed solution: DFS agreed to investigate all instances of RESPA violations and work directly with the CFPB and or the NYS Dept of State to pursue a remedy. You are urged to report all instances of marketing violations including unfair rental agreements with origination entities that specifically exclude other originators from competing for that same business. You may email Deputy Ricketts directly at: rholda.ricketts@dfs.ny.gov or her Assistant Helen Hodge at: helen.hodge@dfs.ny.gov

2) Mortgage Broker Registration and MLO License Issue time periods. NYAMB expressed serious concern regarding the time it takes to get a new Broker Registrant or Licensed MLO approved. Proposed solution: Since the Department is currently dealing with an 80% withdrawal rate on new applications due to the failure of many new applicants to completely fill out the documents and file the requested documentation, it was suggested that Mortgage Broker entities sponsoring new MLOs review the application and documentation for accuracy and completeness before submitting the application. New Broker entities should seek council experienced with the submission of such applications to NYSDFS. The DFS will provide priority attention to such applications and the time periods for approval will be substantially lessened.

3) Examinations, Scope of, number of examiners, length of time to complete. DFS has clarified the basic scope of the exam to include all documentation, processes, policies and procedures necessary to comply with the basic requirement of Safety and Soundness. This gives the Department a rather wide birth for the examination and therefore they will, in most cases, be requiring at least two examiners for

ten days to implement any field examination. Solution: Follow the First Day Letter carefully and prepare all documentation in advance. Have all files and records accessible at the examination on site and have your compliance officer prepared to answer questions and provide additional information quickly. Examiners will be reviewing all pertinent data but will also be experiencing your day-to-day activities. I presume you are all carefully following your own written policies and procedures so the presence of examiners in your office, although not convenient, should not require a dramatic change in the way you do business. The Department has indicated that it is not their intention to disrupt the normal course of your business operations and will do everything possible to avoid doing so.

4) Unannounced Examinations. DFS has indicated that they will be performing unannounced examinations of Mortgage Broker Registrants. They have suggested that they will be completely random and or for cause but in most cases will be conducted by a single examiner over a limited time-period, depending upon the initial results of the examiners visit. The Department has further indicated that at some point every Registered Mortgage Broker will be the subject of an unannounced examination. Solution: “Always Be Ready for your Exam” and you will never have to worry about scrambling around at the last minute. Which brings us to the next item of concern.

5) The most common problem in Mortgage Broker examinations. DFS was very clear on this one. The number one biggest problem is the failure to follow the Mortgage Broker’s own written Policies and Procedures. Solution: Follow your policies and procedures! It is not enough to have a beautifully prepared policies and procedures manual. You “must” operate as it is written. Nothing wrong with a prepared manual if you follow it but if it is not appropriate for your unique business operation then it must be modified so that it is. Review your policies and procedures regularly and make adjustments accordingly so that your day to day activity mirrors your written policies and procedures.

6) Are Registered Mortgage Brokers with the Limited Cyber Security Exemption required to comply with the regulation with regard to Penetration Testing and Assessment. DFS is interpreting the regulation to require all Limited Exempt Entities to provide an annual self-assessment and penetration testing. How often and to what degree we test for penetration remains unclear at this time. Solution: Find a quality Cyber Security Company that can provide these services to you and be sure to have on file all service and indemnification agreements with such companies for the Department’s review.

In Washington DC the NYAMB Legislative team met with your Congressional Representatives regarding three issues that that all Mortgage Brokers throughout the entire USA are facing today.

1) CFPB Guidance for the industry. The CFPB has refused to issue guidance to the industry and instead has been regulating through vigorous and often over-zealous enforcement. This approach has denied regulated entities fair notice of changes and time to comply and it increases costs to consumers through increased compliance costs. In addition, new products that could benefit the consumer are not available because the CFPB fails to reply to questions. Solution: NYAMB and NAMB support the passage of HR5534, The Guide Act. introduced by Representatives Sean Duffy (R-WI) and Ed Perlmutter (D-CO), it seeks to organize the Bureaus process of providing rules and guidance to better protect consumers. It also provides a frame-work for guidance to the industry with specific time periods for providing written guidance.

2) Legislative Changes to Ban the Abusive Use of Trigger Leads. Currently when borrowers have their credit pulled by a mortgage originator, the credit bureaus are aggressively selling the personal credit data of borrowers to another mortgage originator. Consumers are being called and are being confused or fraudulently tricked into providing personal information to yet another mortgage originator. Consumers believe the mortgage broker should be protecting their information and are unaware that it is the credit bureau that is selling their information and not the mortgage originator. Solution: NYAMB and the NAMB seeks to ban the use of trigger leads for this purpose and supports adding appropriate legislative language to HR4028 and S1982 The Protect Act 2017. Passage of S2362, Control Your Personal Credit Information Act, would also provide more control to consumers as to when and how their credit information is sold. NYAMB and NAMB believe that applying for a mortgage should be private and not public. The consumer should be given control over their own credit information and who has a right to receive it.

3) Changing the 3% Qualified Mortgage Rule. The 3% Rule double counts the cost of a brokered loan to the consumer. The rule was never intended to count fees already included in the rate offered by the Mortgage Broker by the compensation plan offered and paid by the lender. The CFPB has already pointed out this inequity in an earlier correction when they excluded payments from the QM points and fee cap from a lender to their employees, so a similar result should occur for payments from lenders to Mortgage Broker entities and their employee loan originators. Solution: Remove the 3% cap on any payments that are already included in the rate set by the lender/creditor. Co-sponsor HR2570, The Mortgage Fairness Act of 2017.

The legislative committee also met with the new Assistant Director of the CFPB, Daniel Smith and was surprised to hear of the many positive changes that are in store for the industry under the new leadership. The CFPB is clearly on a new mission and we congratulate and support them in their endeavor to make the changes necessary to positively impact the industry.

At home your NYAMB just ended our Wholesale Conference & Trade Show in White Plains with a SOLD-OUT vendor exhibit hall.

The show began with a well-attended Broker/Lender Round Table discussion of new products and industry trends and a spirited conversation on the differences between Licensed MLOs and Registered MLOs and the qualifications and expertise required for Licensure by comparison. Excellent and useful information when competing for business.

The Deputy Superintendent of the NYS Department of Financial Services, Rholda Ricketts was present with her Assistant Helen Hodge. They shared thoughtful insight as to the examination process and detailed advice on compliance issues regarding policies and procedures.

Al Arper, President of Absolute Logic gave an excellent presentation on how your business can easily be compromised without serious and comprehensive cyber security protection. This was a sobering but necessary call to action for many. Please do not miss AL at the next NYAMB Convention in October.

We also had an excellent presentation by Jason Jeffries of Freddie Mac. Jason is the Affordable Lending Manager NE and he provided a tremendous amount of insight on the mission of Freddie Mac in "Making Affordable Lending Possible".

Another excellent speaker was Hector Castillo, President & CEO of Exit Realty New York Metro. Hector blew us all away with his in-depth insight into the psychology of the Realtor mind and exactly how to work with Realtors to win their business and continued loyalty. Hector knows his stuff! As one of the largest real estate franchisees in the USA, Hector has over 1600 agents in 46 offices and handles the interaction between Realtor and Loan Originator every day in a big way. The good news is ... Hector will be back for the NYAMB Convention in October with his full presentation. Do NOT miss this presentation if you want to grow your business and put more money on your pocket.

We also had an informative presentation by Bonnie Nachamie Esq. of Bonnie S. Nachamie, PC and Wayne A. Watkinson of Offit Kurman Attorneys at law. So much to learn about exercising appropriate managerial control over employees, business and consumer information as well as LO Comp Plans and much more. We need to know how to protect our business so that we can continue to provide our service to our clients long into the future and presentations like this are a "must see"!

Well those were the highlights. As usual I made another excellent lender contact at the show. I also learned several new tricks to earn more money so it is possible to teach an old dog a new trick. After 31 years of this business you would think I had it down but the only thing I really have down is the fact that every time I come to an NYAMB event I walk away with new knowledge that helps me grow my business and my bottom line!

UPDATE: A New Member Benefit was announced. The NYAMB Compliance Hot Line will be available for free to members seeking assistance on compliance issues. The program will be hosted by our newest member of the NYAMB Board of Directors and Board Council, Attorney Michael Barone of Abrams, Garfinkel, Margolis, Bergson, LLP. Michael is the Managing Partner of AGMB's Mortgage Compliance Practice and has extensive experience in representing and providing guidance to Mortgage Brokers. Please stay tuned for more information on this awesome new member benefit.

Well... your NYAMB has been busy on your behalf. Please take the time to check out the upcoming event details for our 30th Anniversary Convention. This is going to be the best convention ever with super guest speakers that will provide you with the information you need to grow your business and prosper long into the future. Watch for announcements coming soon for this most spectacular event.

Until next quarter...

Sincerely,

Mark Favaloro
President NYAMB