

Good News from OFIR on Seller Financing and the Mortgage Loan Originator Act

June 29, 2010

The Michigan Office of Financial and Insurance (“OFIR”) has recently issued important and helpful answers to questions regarding the upcoming July 31st implementation of the Michigan Loan Originator Licensing Act (“Originator Act”). As many of you are aware, the Originator Act stems from a nationwide effort to crack down on mortgage fraud whereby Congress passed the Safe and Fair Enforcement for Mortgage Licensing Act (the “SAFE Act”). The SAFE Act requires states to establish uniform regulations and minimum licensing requirements for mortgage loan originators. As a result, Michigan passed the Originator Act.

Review of the Originator Act created immediate concern as to whether REALTORS® or their client/sellers would be subject to the Originator Act when a property is sold on land contract, purchase money mortgage or some other form of seller financing. However, OFIR’s interpretation and planned implementation of the Originator Act should go a long way in allaying REALTOR® concerns. While all parties continue to await an official statement from the Federal Department of Housing and Urban Development (“HUD”) regarding uniform interpretations and application of the specific provisions aimed at seller financing, OFIR has released the following discussion items as they prepare for the July 31st implementation. As you’ll see, the FAQ’s indicate that OFIR **does not** currently consider a land contract, as set forth in MCL 565.351 et seq., to be included in the definition of “Residential Mortgage Loan” as it is used in the Michigan Mortgage Loan Originator Licensing Act.

This is great news for Michigan real estate. However, MAR advocates guarded optimism until HUD comes back with a final rule, regulation, interpretation, or formal guidance of the Federal S.A.F.E. Act. In the continued absence of an official response from HUD, MAR will continue to keep members apprised of OFIR’S planned implementation and will distribute materials to help you and your clients best prepared for the July 31st implementation date in the coming weeks.

SAFE Act FAQ’s



Is a “land contract” a residential mortgage loan as defined in the Michigan Mortgage Loan Originator Licensing Act?



Subject to a final rule, regulation, interpretation, or formal guidance of the Federal S.A.F.E. Act from the Department of Housing and Urban Development indicating otherwise, the Michigan Office of Financial and Insurance Regulation does not currently consider a land contract, as set forth in MCL 565.351 et seq., to be included in the definition of “Residential Mortgage Loan” as it is used in the Michigan Mortgage Loan Originator Licensing Act.

However, land contracts are specifically covered by the Michigan Mortgage Brokers, Lenders, and Servicers Licensing Act and, unless otherwise exempt, an individual or business entity that brokers, makes loans on, or services land contracts is required to obtain the appropriate license or registration there under.

Q

Is an individual required to be licensed as a mortgage loan originator under the Michigan Mortgage Loan Originator Licensing Act if he/she does seller financing for a dwelling owned by the individual but not used as a dwelling by the individual?

A

Yes, an individual that provides seller financing in the form of a residential mortgage loan for a dwelling owned by the individual but not used as a dwelling by the individual (“non-owner occupied dwelling”) is required to be licensed.

The Michigan Mortgage Loan Originator Licensing Act provides an exemption for seller financing of the sale of their residence. Section 5(2)(c) of the Michigan Mortgage Loan Originator Licensing Act exempts from the licensing requirements an individual that provides seller financing in the form of a residential mortgage loan for a dwelling that served as their residence (OFIR interprets this to mean the seller’s current residence). There is no similar exemption for seller financing of non-owner occupied dwellings. Accordingly, a license is required to provide seller financing in the form of a residential mortgage loan for a non-owner occupied dwelling.

Q

Is a “lease with option to buy/lease to own” a residential mortgage loan as defined in the Michigan Mortgage Loan Originator Licensing Act?

A

Subject to a final rule, regulation, interpretation, or formal guidance of the Federal S.A.F.E. Act from the Department of Housing and Urban Development indicating otherwise, the Michigan Office of Financial and Insurance Regulation does not currently consider a “lease with option to buy/lease to own” to be included in the definition of “Residential Mortgage Loan” as it is used in the Michigan Mortgage Loan Originator Licensing Act.