



ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Thomas L. Wood
Acting Superintendent of Financial Institutions

Janice K. Brewer
Governor

REGULATORY ALERT

MB&BK-09-02

DATE: September 21, 2009

TO: Department of Financial Institutions (“DFI”) Mortgage Licensees and loan modification companies

FROM: Thomas L. Wood, Acting Superintendent

RE: **Loan Modifications**

Recent revisions to Arizona statutory law re-defined “loan originator.” This term will now include any person who “on behalf of a borrower, negotiates with a lender or noteholder to obtain a temporary or permanent modification in an existing residential mortgage loan agreement.” HB 2143, Section 3 amending A.R.S. § 6-991. Beginning on July 1, 2010 Loan Originators must be licensed.

Under Arizona law, a Loan Originator shall not originate a mortgage loan unless employed by a mortgage broker, mortgage banker, or consumer lender. HB 2143, Section 5, amending A.R.S. § 6-991.02(13). The effect of these provisions is that all companies whose owners or employees offer mortgage loan modification services to customers should immediately take steps to become licensed as Mortgage Brokers or Mortgage Bankers under Arizona law.

HB 2143, Section 4 amending A.R.S. § 6-991.01 also provides an exemption from Loan Originator licensing for

“A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client unless the attorney is compensated by a lender, a mortgage broker or any other loan originator or by an agent of the lender, mortgage broker or other loan originator.”

The Department interprets this “ancillary matter” exemption language to mean that a lawyer who negotiates a new loan or a modification of an existing loan as a transaction that is supplemental or subordinate to other representation or counseling of a client is exempt from licensure as a loan

originator unless he is paid as described in the statute. On the other hand, a lawyer who is engaged solely in negotiating loan originations, including loan modifications, is not exempt from licensure as a loan originator.

Appropriate application forms and guidance are available on the Nationwide Mortgage Licensing System website, at <http://www.stateregulatoryregistry.org> , or on Department's website, at www.azdfi.gov.

For questions regarding this Regulatory Alert, please contact Jack Hudock, Rules Attorney, at (602) 771-2800, ext. 12774, or speak with a member of the licensing division staff.