

September 23, 2003

The Hon. Michael Easley
Governor, State of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Dear Governor Easley:

This letter will summarize the efforts of the Office of Commissioner of Banks (“OCOB”) to implement the Mortgage Lending Act (“ACT”) during that statute’s first year in effect, which ended on June 30, 2003. It will also review trends in the mortgage lending industry since June 30 and areas of concern to OCOB regarding the mortgage lending industry for the current year and beyond.

Initial Implementation

The first phase of MLA implementation was the initial licensure under the statute of mortgage bankers, mortgage brokers and loan officers. The substantial majority of these licenses were issued under the “grandfather” provisions of MLA to covered personnel of firms in the mortgage lending business in North Carolina on July 1, 2002 (the effective date of MLA). “Grandfather” status was not extended to: (i) loan originators employed by insurance or consumer finance companies or their agents, who are “limited loan officers” or “exclusive mortgage brokers” under revisions to MLA enacted by the General Assembly in 2002; and (ii) persons or entities who did not meet the statutory requirements for licensure for reasons such as prior criminal record or lack of financial responsibility. Employees of exempt entities such as depository institutions and certain government agencies are not required to be licensed under MLA.

OCOB staff approved “grandfathered” applications for 562 mortgage lenders, 748 mortgage brokers and 13,501 loan officers (of whom 2,196 are inactive). In addition, 199 “exclusive broker” licenses and 1,200 “limited loan officer” licenses had been issued through June 30, 2003.

Through June 30, 2003, OCOB staff had denied 747 applications for licensure under the MLA. Of these denials, (i) 217 were not appealed or pursued and are final; (ii) 178 were resolved through issuance of a license after further review and, in some cases,

correction of the relevant applications; (iii) 145 were appealed to the Commissioner and (iv) 207 were in process. Through June 30, 2003, 118 appeals had been heard by the Commissioner, resulting in 48 affirmations of denials and 45 orders overturning denials and allowing the issuance of licenses. At that date, twenty-seven (27) appeals remained to be heard and 25 appeals had been heard but final orders had not yet been issued. Three decisions of the Commissioner regarding these denials have been appealed to the Banking Commission to date; as a result, the Commissioner's decision has been upheld in one appeal and two have yet to be heard.

As you know, it has been alleged that North Carolina's predatory lending law and the MLA have resulted in the denial of credit to sub-prime borrowers. I believe that the facts do not support that allegation. The number of mortgage lenders and brokers operating in North Carolina today is essentially the same as it was prior to the enactment of these statutes, and the number of loan officers is large and growing. Further, I have received no complaints during the last year regarding the inability of North Carolinians to obtain residential real estate loans. Complaints I have received and recent trends in real estate foreclosures suggest, to the contrary, that our citizens have received all of the credit of this kind that they need -- and more.

My colleagues have worked very hard to handle the administrative requirements of the MLA in its first year of effectiveness, and I believe that they have done a very good job. As discussed below, we intend to improve in the future.

Next Steps

OCOB's objectives for Fiscal Year 2003 / 2004 are as follows:

1. Efficient renewal of MLA licenses. To that end OCOB has made significant expenditures that should allow the process to go more smoothly this year. As of June 30, 8,529 license holders had applied for renewals. An interesting and troubling aspect of this process is that 3,846 applicants had not completed the continuing education courses required by MLA and, accordingly, could be subject to additional fees or potential loss of licenses. Further, we are seeing some indications that initial applications of some persons may not have been true and correct when filed, which will require remedial action.
2. Efficient handling of new applications, which we are currently receiving at the rate of between 75 and 100 per week.
3. Implementation of an examination program to insure compliance by licensed mortgage bankers and brokers.

4. Enhancement of our investigative process to enforce MLA and related laws, including, particularly, the predatory lending law.

I believe that the objectives just stated are appropriate and achievable and that they will strengthen the mortgage lending industry in North Carolina.

Conclusion

The mortgage lending industry in North Carolina is large, diverse and very competitive. Through its trade associations, the industry is working to facilitate effective compliance with the MLA by market participants. That being said, the industry also includes some persons and entities for whom consumer protection generally, and compliance with the MLA in particular, is an afterthought at best. My colleagues and I have worked hard to create an infrastructure that will allow us to effectively and fairly police the mortgage market. I believe that we have had substantial success in that endeavor and look forward to continuing that very important activity in the future.

Very truly yours,

Joseph A. Smith, Jr.
Commissioner of Banks

JAS/is

Cc: The Hon. Richard H. Moore
Chairman, State Banking Commission