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# legal update



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## Revision to New York Banking Law Requires Mortgage Loan Originator Registration and Education Requirements

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Article 12-D of the New York Banking Law currently provides for the licensing of mortgage bankers and the registration of mortgage brokers. However, until recently there was no requirement that persons in the mortgage lending industry be individually registered or that they complete annual educational training. On January 1, 2007, an amendment to the New York Banking Law went into effect that adds a new Article 12-E. This amendment requires the registration of all residential real property mortgage loan originators (MLOs), and subjects them to annual educational requirements and to regulation by the New York Superintendent of Banks (the Superintendent).

Regulators in New York and other states have noticed that individual MLOs who choose to engage in abusive practices tend to take advantage of lax government oversight by moving from lender to lender and from jurisdiction to jurisdiction. This new law is intended to stop such practices by making MLOs accountable for their actions both in New York and in other states. In addition, the new law recognizes that lending laws, regulations, and practices are constantly changing and that MLOs must continually educate themselves as to these changes. It was the hope of the New York State Assembly that by licensing individual mortgage loan originators, and by setting educational standards for such individuals, there would be improvement in the professionalism of the mortgage industry as a whole.

### **Implementation**

Although the new law went into effect on January 1, 2007, the Banking Department has up to two years to implement the law and put into place rules and new systems required to administer the law. As a result, any MLO employed by or affiliated with a mortgage originating entity prior to January 1, 2007, and who engages in mortgage loan origination after that date, will have until January 1, 2009 to comply with the registration and educational requirements of the new law.

According to Article 12-E, "Mortgage Loan Originator" means any person employed by or affiliated with an originating entity (a person or entity licensed or registered pursuant to article 12-D of the New York State Banking Law), who engages in mortgage loan originating on residential property. An MLO is not any officer or manager of an originating entity that supervises the activities of MLOs and does not communicate directly with the customers of the originating entity. "Mortgage Loan Originating" means assisting a customer of an originating entity by engaging in the solicitation, processing, negotiation, placing, making and/or closing of the customer's loan, but does not include any person who provides clerical or secretarial services.

As part of the application process, the Superintendent will judge an applicant based upon his or her general character and educational qualifications. If the Superintendent believes that the applicant will engage in loan originating honestly, fairly, and efficiently, the Superintendent will issue a registration certificate. If not, the Superintendent will issue a written denial to the applicant.

Grounds for the Superintendent to issue a denial include: (1) conviction of certain crimes that are felonies in New York, or would be felonies if committed in New York; or (2) prior revocation of the applicant's registration by the Superintendent or by a similar regulating entity in another state; or (3) applicant has been a director, partner, or substantial stockholder of an originating entity which has had a registration or license revoked by the Superintendent or by a similar regulating entity in another state; or (4) applicant has been an employee, officer or agent of, or a consultant to, an originating entity which has had a registration or license revoked by the Superintendent, or by a similar regulatory entity of another state, where this person was found to bear responsibility in connection with the revocation.

### **Educational Requirements**

Each MLO must satisfactorily complete 18 hours of educational requirements within five years prior to the approval of an application or within one year after approval.

Once registered, an MLO must complete an additional 18 hours of education courses biennially, including three hours of mandatory instruction in ethical conduct in the area of mortgage loan originating or lending.

Each biennial education requirement must additionally include educational courses in statutory requirements, regulatory requirements, and judicial interpretations governing mortgage lending and real estate transactions and practices. Failure to comply with the MLO educational requirements will result in the expiration of the MLO's registration unless an exception applies, but the expired registration may be reinstated upon satisfactory completion of the educational requirements within 60 days of expiration.

The new education requirements may be met by completing education courses provided by or sponsored through the National Association of Mortgage Brokers or the Mortgage Bankers

Association of America through their New York state affiliates, or by or through any other industry trade associations or other approved entities, or degree and non-degree granting institutions of post-secondary education chartered, approved or licensed by the New York State Board of Regents.

However, there is an exception to the new education requirements for the employees of entities that provide training to their MLOs that is substantially equivalent to that required by the new law, or which have been approved by the Superintendent. In addition, New York attorneys who engage in mortgage loan originating are exempt from the new educational requirements.

### **Fees**

As part of the application process, the Superintendent will collect an initial investigation and registration fee. This fee is non-refundable, and will be retained as a processing fee if the application is denied. In addition, the Superintendent will collect an annual registration fee. Failure to pay this fee by the due date will result in the expiration of the MLO's registration, but the registration may be reinstated upon payment within 60 days of expiration.

### **Required Records**

As part of the new law's requirements, each mortgage originating entity must maintain a record of the educational courses completed by each of its employed MLOs. They must also provide written quarterly reports to the Superintendent as to the status of any MLOs employed by or affiliated with the mortgage originating entity, including a report detailing any dismissal for cause of an MLO that was due to or based upon an alleged violation of the requirements of Article 12-E.

In addition, the Superintendent is now required to maintain a list of all MLOs that are registered and in good standing on the Banking Department's website. This list must indicate the MLO's name and registration number, and the name of the current mortgage originating entity, if any, employing the MLO.

### **Conclusion**

The mortgage banking industry has been working with our state legislators and the Banking Department for nearly 15 years in developing methods to police the residential mortgage industry. The registration and educational requirements of Article 12-E will aid in upholding the integrity of the mortgage loan process. The new system increases accountability and professionalism and assists regulators in identifying abusive loan originators. The end result of the new legislation should be seen as a benefit to the vast majority of mortgage bankers and brokers who consistently attend continuing educational programs and conduct their business in a professional manner.