

THE JOURNAL

The Magazine For Manufactured & Modular Housing Professionals

February 2010

Understanding the SAFE Act

By Thayer Long

To fully understand the Secure and Fair Enforcement Mortgage Licensing (SAFE) Act one needs to go back to events leading up to the housing boom- and inevitable bust. With the aggressive marketing and utilization of various loan products, such as interest only loans and option adjustable rate mortgages, money flowed into the housing market- allowing almost anyone to purchase a home. This easy access to capital was encouraged by many, despite the irresponsible underwriting criteria.

As we all know the housing boom came to a screeching halt in 2007 and took the economy with it. The system that drove the site-built housing boom was simply unsustainable. (An unfortunate commentary to all of this was that those of us in the manufactured housing industry had learned those lessons almost a decade earlier, and the warning signs went largely ignored.) But the damage had been done, and as lawmakers began to look for answers in who created the situation, and also searched for solutions in preventing this from occurring again, the result invariably was the conclusion that the system failed badly, and increased regulation of the mortgage industry was necessary in order to protect consumers.

The mortgage brokerage business in particular came under extreme scrutiny. Those individuals and companies that helped arrange the financing for consumers and in essence helped drive this unsustainable model of lending were, in the eyes of politicians and policymakers, relatively unregulated- and needed to be reined in. And with the housing market crashing and dragging the global economy with it, Congress and regulators had a blank check to propose and adopt anything they wanted to fix the problem, and they did just that.

The Secure and Fair Enforcement Mortgage Licensing (SAFE) Act was passed in 2008 as part of the Housing and Economic Recovery Act passed by a Democratic Congress and signed into law by President Bush. The SAFE Act was intended to regulate mortgage brokers and mortgage loan

originators, and as mentioned, stemmed from reported abuses by brokers steering borrowers into specific loan products. The SAFE Act requires all states to have the licensing and registration system in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. The SAFE Act requires state statutes to require originators to become licensed, take an education course, pass a test, and undergo civil, criminal and financial background checks.

While MHI was successful in legislatively addressing issues for the industry by creating a fairly stringent factors test in the applicability of the federal law- thereby essentially “carving out” most industry retailers and salespersons that simply act as a conduit between consumers and lenders. However, as we all now know, an unintended consequence of the implementation at the federal and state level has resulted in the threat of sweeping retailers or salespersons into the licensing requirements, as well as the varying licenses personal property lenders now must get. How did this happen? While the SAFE Act is a federal law- it works by requiring all states to adopt their own versions of the SAFE Act. To assist states in implementing the law, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) drafted and adopted model state legislation. While the model state law was for the most part the same as the federal law- a few critical modifications were made in the model legislation that broadened the applicability of the law to encompass more individuals.

What does this all mean for the industry and what should you do?

MHI and the industry associations around the country have continued to assert that retailers and salespersons should not be required to be licensed mortgage originators if they do not negotiate loan terms, and do not receive any compensation from a lender for helping to facilitate a loan transaction between the home purchaser and the lender. MHI believes that the model legislation fundamentally exceeded the boundaries set forth by the federal legislation, which was targeted at mortgage loan brokers, not individuals that perform administrative and clerical duties and serve as a conduit between homebuyers and lenders. The law is clear in that it applies to any loan that is used to finance the purchase of a residence- so homes financed using personal property loans would apply. However, MHI does also maintain that in states where personal property lenders already have licensing obligations under different laws, it is unreasonable and overreaching to make those lenders comply with two different sets of regulations, and therefore some relief should be given to lenders in those situations.

In addition, last month, HUD released their proposed rule on how states should proceed in implementing the SAFE Act. This regulation is important since it will help guide states in how they address manufactured home retailers and salespeople who simply provide administrative and clerical support on-site for lenders. It is important to note that the HUD rule is based on the federal law- not the model legislation with which the industry has major concerns with. This is an important point since the federal law does treat our industry much more favorably. MHI is aggressively working through this rulemaking on solutions to alleviate these industry dilemmas, as well as continuing to meet with HUD and CSBS officials to address concerns we have regarding the implementation of the SAFE Act.

At this point, there are no clear cut answers- but that does not mean it is time to press the panic button - yet. Many states have adopted clarifying language for the industry already, however many states are still working through this issue. This is a critical issue for the industry to be aware of- but before you make any assumptions and changes in the way you do business, it is highly recommended that you check with your state association first to see how the SAFE Act has been addressed- and it is vital that you stay involved and abreast of this issue as it evolves.

###

Thayer Long is Executive Vice President of MHI, the preeminent national trade association for manufactured and modular housing industries, representing all segments of the industries before Congress and the Federal government. From its Washington, D.C. area headquarters, MHI actively works to promote fair laws and regulation for all MHI members and the industry. For more information on MHI, visit www.manufacturedhousing.org