



Realty Check: Mortgage Lending in 2010

by Tom Heath • published in the January 2010 issue

Several regulatory, legislative, and market forces will converge in 2010 to reshape the mortgage industry. There are still unknowns in our economy that can derail current progress, but if the current trends hold true, the end result should be increased home sales, less ambiguity from lenders, and a stronger real estate market.

Things we know

Lenders are now required to use a new Good Faith Estimate. The benefits of the new form are that it is standardized so every lender will be using the same form; it mandates limits on how much or how often estimates can change; it creates a culture of “shopping,” encouraging borrowers to look for the best loan. The problems are that it is now 3-pages versus the old 1 page form; it lacks pertinent information to the transaction, such as total amount of money needed to close and the full monthly payment with taxes and insurance; it treats indirect compensation received by mortgage brokers and mortgage bankers differently, which could create uncertainty for consumers. Expect early year confusion as originators work through the changed procedures and consumers work through the changed form.

Loan originators are required to be licensed by July 1, 2010. Every originator will have to be registered on the Nationwide Mortgage Licensing System (NMLS) and obtain a unique identifying number. Regardless of company changes, state relocations, or extended periods of absence from the mortgage industry, the originator’s unique identifier will be attached to that individual and recorded on every application he/she originates. The law distinguishes between state licensed entities and Federally Chartered depository institutions. Originators working for the latter are required to be registered on the nationwide database and go through civil, criminal and credit background checks prior to employment. State regulated lenders must undergo the same registration process and are required to additionally undergo education and testing. Licensing can take 4–5 months, and some originators may find themselves unable to operate if they wait too long to start the process. Additionally, the state legislature is working through a fiscal crisis of epic proportions and has yet to appropriate adequate funds to the Department of Financial Institutions (DFI), increasing the likelihood of licensing delays. Ultimately, the loan originator licensing law will be good for Arizona consumers as it increases accountability and improves standards for mortgage professionals.

Things we will discover

Early in the year the Federal Reserve (Fed) will announce their changes to the Truth in Lending Act. Some of the major potential changes could redefine the charges that affect a loan’s Annual Percentage Rate (APR), redesign the Truth in Lending form, restructure the means of originator compensation to prevent “steering” borrowers into less advantageous loans for higher commission, and change disclosure requirements for Adjustable Rate Mortgages and HELOCs.

Congress will debate the merits of a new Consumer Financial Protection Agency and whether or not to restructure the powers of other regulators. The proposed House and Senate versions are vastly different, and this will be a

painstaking debate as all of the potentially affected regulators will be pushing to maximize their involvement and avoid marginalization.

What we have yet to discover

Governmental incentives and pressures will certainly influence how banks evolve in their approach to short sales, loan modifications, and foreclosures. A resolution will be critical as 2010 is projected to be another big year in Adjustable Rate Mortgage resets.

The Fed plans to end its purchases of Mortgage Backed Securities (MBS) by March. Demand for MBS has kept mortgage rates low, but when the Fed curtails purchases, the demand is likely to dissipate. Increased mortgage rates are likely when the government removes the artificial floor.

The insurance fund that allows FHA borrowers to obtain loans with lower down payments and weaker credit scores is showing signs of fracture. While it is mandated to maintain a 2% reserve, after anticipating delinquencies for the next 30 years, the actual reserve is barely exceeds .50%. The FHA Commissioner has indicated that changes to restore fund viability are likely to increase down payment requirements, decrease allowable seller contribution amounts, and increase borrowers' insurance premiums.

What we can expect

Consumers will look to buy early in the year to take advantage of lower rates and tax credits. Even after the expiration of incentives and an increase in rates, do not expect the market to go dormant. If home prices continue to stabilize and the economy continues to show signs of recovery, expect buyers to leave the sidelines and enter the game. Banks will tighten their guidelines in respect to lower credit scores and down payments, but will reduce hurdles for profiles traditionally linked to strong borrowers.

2009 will likely be recorded as the most challenging year for the modern mortgage industry, and 2010 as the most defining.

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