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IMPORTANT MESSAGE TO ALL NCMHA RETAILERS AND LENDERS

In response to the meltdown in the mortgage industry, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of '08 (or SAFE Act). The SAFE Act requires all States to establish minimum standards for the licensing and regulation of mortgage loan officers (called "mortgage loan originators"), mortgage bankers, and mortgage brokers.

The North Carolina General Assembly, responding to this federal mandate, recently passed House Bill 1523 - The S.A.F.E. Mortgage Licensing Act – and Governor Perdue signed it into law.

For the manufactured housing industry, a point of concern was that the original bill required licensure by the N.C. Commissioner of Banks as a "mortgage loan originator" for any person who "offers or negotiates the terms of a residential mortgage loan". This was interpreted to include advising a customer on loan terms (rates, fees or other costs) and collecting information on behalf of a customer to send in with respect to a mortgage loan package.

NCMHA had numerous meetings with staff for the Commissioner of Banks and with the bill sponsor to discuss the impact of this bill on manufactured housing retailers. Several NCMHA members worked hard on this bill by participating in House and Senate committee meetings, attending the annual legislative day (this was our main issue this year), writing letters to legislators and personally meeting with members of the General Assembly. Through their hard work, we were able to carve out one of only a few special exemptions for manufactured housing retailers, as follows:

The term "mortgage loan originator" does not include:

"An individual who is a salesperson for a licensed manufactured housing retailer that performs the purely administrative and clerical task of physically handling or transmitting to a licensed mortgage loan originator on behalf of a prospective borrower an application and other forms completed by the prospective borrower. Nothing in this subpart prohibits a salesperson, upon written request of a mortgage loan originator and after a prospective borrower completes an application, from pulling and transmitting a credit report with the application."

The result is that the salesperson may transmit the loan application (completed by the customer) to the mortgage lender and, upon request of the lender, may pull a credit report to send with the application. The lender may give the dealer a standing request to pull credit (you don't need a separate request for every customer), and an email request satisfies the requirement that the request be in writing. A retailer should not attempt to structure mortgage loans, advise clients on what mortgage is best for a customer or make judgments about whether or not a customer can qualify for a loan. The Banking Commissioner has said he wants loan applications sent to a

mortgage lender, where a mortgage loan officer who is trained and licensed can interact with your customer.

As a practical matter, it is common for mortgage loan rates to be published in the newspaper or on the internet. Calculating a payment based upon that information is simple math which anyone can perform. Information about debt to income ratios, particularly for government programs, is regularly published on the internet for public use. Interacting with your customer on basic information like this does not require a mortgage license. However, once you have access to the information that is revealed in an application and credit report, and you begin to offer guidance to your customer about obtaining a mortgage loan, or which mortgage product is better, then you move into restricted territory.

The proposed effective date for the SAFE Act is July 31, 2009. For most lenders there is little change in the law. Mortgage banks, mortgage brokers and mortgage loan officers have been licensed and bonded by the Office of Commissioner of Banks for 10 years. However, the Commissioner of Banks has indicated that they understand there will need to be time to comply with the new provisions. They are not sending out "mortgage police" on August 1, rather, we anticipate there will be a grace period where information on the law goes out and everyone is given time to adjust.

We encourage all members to review their current policies and work with your regular lending sources to comply with the new law. Keep in mind that every state has to comply (South Carolina and Virginia have already passed their SAFE Act bills). Incidentally, we understand several corporate owned retail sales centers have already adjusted their practices to assure compliance.

A special "thank you" goes out to all the members who worked tirelessly on this bill and helped us get the special exemption. Thanks especially to Sonny Bannister and the Independent Retailer Group and Wally Tyser-Clayton Homes Legal Counsel, who worked hard on this bill.

If you have any questions or need additional information, please call the Association office at (919) 872-2740 or by email Brad@NC-MHA.org.