

California Association of Mortgage Brokers



TO: Members of the Senate Banking, Finance, & Insurance Committee
FROM: Ed Smith, Jr., Vice President of Government Affairs & Industry Relations
Ken Jones, Co-Chair, Government Affairs Committee
SUBJECT: AB 33 (Nava)
POSITION: **Oppose Unless Amended**
DATE: June 25, 2009

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On behalf of the California Association of Mortgage Brokers (CAMB), we respectfully oppose AB 33 (Nava) unless amended.

CAMB is a nonprofit professional trade association consisting of licensed real estate brokers, salespersons, and affiliated lenders whose primary business is assisting consumers in obtaining residential and commercial real estate financing. Mortgage brokers originate the majority of all residential mortgages in California. CAMB members subscribe to a Code of Best Practices and Ethics, pledging to uphold the highest standards of professional conduct, honesty and integrity, and to full compliance with applicable laws. CAMB opposes AB 33 unless amended.

CAMB Chapters

Central Coast

Central Valley

East Bay

Inland Empire

Los Angeles Metro

Greater Monterey Bay Area

North Bay

North Central Coast

North Los Angeles County

Greater Northstate

Orange County

Greater Sacramento Area

San Diego

San Diego North County

San Francisco Peninsula

San Gabriel Valley

San Joaquin

Silicon Valley

Southern Los Angeles County

One of the stated goals of AB 33 is to “transfer from the DRE to the Division of Corporations the authority to license and regulate real estate licensees that provide lending, mortgage brokerage services, and business opportunity activities, as specified.”(AB33, pg.2, para.3) The bill as currently offered would not change the current regulations under which DRE mortgage brokers operate:

“Nothing in this bill shall expand or diminish existing authorities of the existing departments or commissioners except as set forth in subdivision (d) of Section 25. ***Nothing in this bill shall expand or contract any existing duties, including fiduciary duties, of their licensees.*** Nothing in this bill or the regulations it authorizes shall contract existing consumer protections.” (AB33 section 25(e), italics added.)

CAMB’s concern with this bill is not so much what it addresses, *but what it does not*. Proposed sections 48 and 49 ask for no less than 29 recommendations on how to make this legislation effective, all due after the legislation is adopted. CAMB believes this litany of issues must be adequately addressed to warrant such a complex and costly undertaking. Specifically, CAMB is concerned with the lack of details regarding the consolidation of lending licensing frameworks and the future of critical recovery funds.

Overview

In California, there are currently three licensing paradigms for mortgage loan originators. Two under the DOC (California Residential Mortgage Lending Act (CRMLA) and California Finance Lender’s Law (CFL)) and one under the DRE:

The California Association of Mortgage Brokers promotes the highest standards of professional and ethical conduct, among which are expert knowledge, accountability, fair dealing, and service to our clients and our community.

“The CRMLA was enacted as an alternative to the existing laws licensing lenders under the Real Estate Law and the California Finance Lenders Law, in order to provide mortgage bankers with a licensing law specifically intended to regulate their primary functions of originating loans and servicing loans. Unlike the Real Estate Law and the California Finance Lenders Law, the CRMLA is specifically designed to authorize and regulate **mortgage banking activities.**” (*California DOC Website.*)

The CFL defines its diverse licensees: “a finance lender is defined in the law as “any person who is engaged in the business of making consumer loans or making commercial loans. Some use this global license to originate mortgage loans. Those who do may only broker loans to lenders that hold a California Finance Lenders license.” (*California DOC Website.*) There are currently no educational or licensing requirements for CFL employees, but principals of the company may not have a criminal history or a history of non-compliance with regulatory requirements. You do need a \$25,000 surety bond and \$25,000 net worth to earn this license.

There is only one body of law that has developed to specifically regulate, license and monitor individual mortgage originators. It is the vehicle of choice for California small business brokers, allowing them to broker to any lending entity – The California Real Estate Law under the DRE.

The AB 33 Consolidation of Lending Licensing Frameworks

AB 33 foretells some sort of future consolidation of the lending licensing framework, but fails to offer any guidance. Instead, it places the cart in front of the horse by moving DRE licensees to the DOC, then asking for recommendations on what to do next:

“On or before January 1, 2011, and for purposes of implementation of Section 25, the Secretary of the Business, Transportation and Housing Agency, in consultation with the Commissioner of Financial Institutions, the Commissioner of Corporations, and the Real Estate Commissioner, shall submit a report to the Legislature that addresses the following: (a) Recommendations regarding all appropriate areas for consolidation of the operations, licensing frameworks, regulations, and other aspects of, on and after July 1, 2011, the Department of Financial Institutions and Department of Corporations, and of pertinent commercial and residential lending, mortgage brokerage, and business opportunity activities by Department of Real Estate licensees.”

(*AB33 section 48(a).*)

CAMB believes that such major change must be discussed in detail before codification.

AB 33 Does Not Adequately Address the Critical Future of DRE Recovery Fund

The adoption of the S.A.F.E. Act (universal loan originator licensing) is now being addressed by California Senate Bill 36. All mortgage originators will now be required to meet the minimum education and qualification requirements that have been required of DRE licensees for decades. As such, CAMB believes mortgage originators who avoided DRE licensing because it had greater requirements, and who are able to qualify, will now migrate back. The adoption of the S.A.F.E. Act should moot concern that “the current regulatory system creates licensing arbitrage, with entities seeking out licenses from various regulators in order to obtain an advantage.”

When the S.A.F.E. Act was completed on a federal level, care was taken to allow small business owners, such as the DRE broker, to continue to operate and compete without the requirement to purchase costly surety bonds or to meet net worth requirements. This effort recognizes the need to retain competition from all channels of mortgage origination, including the small shop community broker who operates on a shoestring budget. One national advertiser says “when banks compete, you win.” CAMB believes when other lending entities are allowed to compete with banks, the consumer wins even more.

A clause within the S.A.F.E. Act allows DRE mortgage brokers to continue to operate without surety bonds or net worth requirements if their state maintains a recovery fund that is available to consumers who are unsuccessful in collecting judgments from mortgage brokers. SB 36 recognizes that the current DRE Recovery Fund provides this benefit to California consumers and recognizes that DRE mortgage brokers qualify under the recovery fund clause. AB 33 potentially places this qualification in jeopardy:

Per AB 33:

“On or before January 1, 2011, and for purposes of implementing Sections 46 and 47, the Secretary of the Business, Transportation and Housing Agency in consultation with the Real Estate Commissioner and the Director of the Office of Real Estate Appraisers shall submit a joint report to the Secretary of Business, Transportation and Housing Legislature that addresses the following: (f) Recommendations regarding the future of the Recovery Account of the Real Estate Fund and the advisability of establishing additional or different recovery accounts to protect consumers in real estate transactions in California.”

(AB33 section 48(f).)

CAMB applauds the federal recognition of recovery funds, believing that the difficulty in obtaining and the cost of surety bonds would cause many competent and experienced DRE mortgage brokers to close their small businesses. Furthermore, especially after such a challenging business year, CAMB is concerned that net worth bars will further thin small

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business ranks, much to the detriment of consumers. As competition between providers disappears, consumer costs will increase while options and service levels decrease.

Should the DRE mortgage brokers licensing framework be “moved” to the DOC, CAMB believes the joint-and-several DRE Recovery Fund (towards which DRE mortgage brokers have contributed for years) or a reasonable facsimile must also be moved in order to continue to meet the requirements of SB 36. AB 33’s failure to adequately address this issue is yet another example of the lack of specifics inherent in AB 33.

For the reasons outlined above, CAMB respectfully opposes AB 33 (Nava.)

We appreciate your consideration of our suggestions.

cc: Aaron Read, Aaron Read & Associates
Robyn Black, Aaron Read & Associates