

## **Key Mortgage/Real Estate Related Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”)**

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1. **Consumer Financial Protection Board**: Creates a council of regulators to oversee the financial system and look for major risks. It will be under the control of the Federal Reserve and have broad oversight of financial products and far-reaching powers to ban abusive products or practices. The agency will oversee banks, mortgage lenders and credit card companies. The major mortgage related laws they will regulate will include RESPA and TILA (now administered by HUD) and HOEPA HMDA and probably ECOA as well. Authority from other entities that supervise this industry such as the Federal Reserve, FDIC, Federal Trade Commission, Office of Thrift Supervision, HUD, etc. will be transferred to the CFPB within 12 months of enactment of the Act.
2. **Appraisals**: Provides for the expiration of the Home Valuation Code of Conduct (“HVCC”) within 90 days of enactment of the Act. The HVCC prohibited mortgage brokers from ordering appraisals to avoid undue influence on the process. The CFPB will establish standards for the appraisals and appraisal management companies. Hopefully, it will permit appraisals to be portable for a consumer so that a consumer could switch lenders and use the same appraisal. Presently, each lender uses its own appraisal management company or companies so a new appraisal is needed if loan is declined or if lender is changed for any reason.
3. **Eliminates Stated Income Loans** (i.e. where borrowers offered no proof of their ability to make mortgage payments): Lenders will be required to obtain proof from borrowers that they can pay for their mortgages. Borrowers will have to provide evidence of income, though tax returns, payroll receipts or bank documents. It creates a “reasonable ability to pay test” that all borrowers must be able to meet to get a loan. There will be a presumption that this test is met for loans made by Fannie Mae or Freddie Mac know as “conforming loans” (“Conforming Loans”) and FHA loans. However, this presumption will be rebuttable. There is an exclusion as to required proof for reverse mortgages and bridge loans.
4. **Prepayment Penalties**: Eliminates prepayment penalties for early repayment of the principal amount on a loan for adjustable rate loans and other more “exotic” products like interest-only loans. On Conforming Loans, they will be restricted to no more than 3 years and 3% of the principal balance. As Fannie Mae and Freddie Mac do not charge these fees any way on the Conforming Loans, there will be little effect on most fixed rate loans in amounts below \$729,000.
5. **Mortgage Broker Fees**: Known as “anti-steering” provision. Mortgage brokers are prohibited from putting borrowers into higher interest loans and products than they qualified for so as to earn additional fees. Under the Act, fees cannot be paid to mortgage brokers based on either the interest rate or the loan terms.

a. Amount of commission will be limited to a commission based on loan size with bonuses on the volume of loans that are originated.

b. Example: Bank A will pay all brokers 1% commission on any loan that is originated. Any broker originating more than 5 loans per month will receive an extra .25%.

c. Mortgage brokers cannot receive some of their fee from the borrower in the form of points and other portion from the lender as yield spread premium (“YSP”). If they receive any YSP from the lender they are prohibited from charging points to the borrower.

6. 3% Limit on lender/broker points and fees: A borrower will not be allowed to pay more than 3% of the loan amount in points and fees on the loan with certain exclusions:

- a. Up to 2% may be paid as discount points if the interest rate is reduced; and
- b. Private mortgage insurance (or PMI) premiums are not included in limit.

7. Licensing: All mortgage loan originators must be licensed and must put their license information on all documentation. This is known as “duty of care.”

8. Retention of 5% of loans made by banks and mortgage banks: Banks and mortgage banks will be required to maintain at least a 5% economic interest in the mortgages that they originate. There will be an exemption from this 5% retention for “qualified residential mortgages.” The exemption is going to encompass those loans that have traditionally had a lower risk of default. This is likely to include Conforming Loans and FHA loans. However, the exact definition of “qualified residential mortgage” will be determined later in the rules and regulations to the Act.

9. Treble damages for violations of Act: Mortgage brokers and other loan originators will be liable for up to 3 times the amount of compensation they received for violating the provisions of this Act plus costs and reasonable attorneys’ fees. This specifically relates to the anti-steering provisions and “duty of care.”

10. Adjustable Rate Loan Disclosures (i.e. ARMs): Lenders will have to disclose both at closing and 6 months prior to first adjustment the maximum amount that borrowers could pay on adjustable-rate mortgages as well as index, adjustment and new monthly payment.

11. Post Closing/Servicing Issues:

- a. Escrows: Mandatory now on some loan products
- b. Pay-Off Letters: Must be provided timely but no more than 7 business days after request for one.
- c. Payment crediting: Payments made by borrower must be credited by the lender as of date of receipt (with certain exclusions)

- d. ARMs-Monthly statement is required to be sent to borrower on these loans
- e. Foreclosure defense: Borrower can assert as a defense in a foreclosure proceeding that either the anti-steering provisions or ability to repay provisions were violated.