

Don't Believe It Unless It's in Writing

By Kenneth R. Harney

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Did your loan officer sit you down and walk you through all the key operational details of your most recent mortgage before you signed?

Did you see a copy of the appraisal and have a chance to review it carefully?

Did you understand when, if ever, a prepayment penalty might take effect to discourage you from refinancing? Or was that whole subject left a little fuzzy?

Did you receive a copy of your loan and settlement cost good-faith estimates within three business days of application?

These may sound like the most basic of questions and you may well answer: Duh! Of course I understood everything I needed to, and yes, my loan officer was an absolute font of useful information.

But the recent \$325 million multi-state legal settlement involving Ameriquest Mortgage Co. suggests that not all is well on the home loan front, and that even experienced buyers and refinancers need to question more, review more, probe more before committing to what is often the biggest debt burden of their lives.

Ameriquest, of Orange, Calif., is a wholly owned subsidiary of ACC Capital Holdings. Its specialty is financing credit-impaired, or non-prime, borrowers. It is the highest-volume mortgage originator in that segment of the market. The company denied any wrongdoing in its settlement with 49 states and the District, but agreed to pay out a staggering \$295 million to an estimated 200,000 borrowers nationwide over the coming year, plus \$30 million to state agencies to reimburse them for legal and investigative costs.

The alleged abuses by Ameriquest loan officers that triggered the states' legal actions constitute a how-to manual for mistreating customers. The 51-page settlement document commits the company and its employees to a strict regimen of corrective steps and model standards of future behavior. Though the requirements are limited to Ameriquest, they are relevant to lender-borrower relationships throughout the marketplace.

For example, Ameriquest loan officers covered by the settlement will be required to explain to every applicant exactly how their mortgage works, from rates to discount points to accurate representations about the prospects for future refinancings. Some consumers complained that Ameriquest loan officers convinced them to pay higher-than-market rates with the oral promise that they would be able to refinance to a lower rate at some future date.

The settlement says: Don't believe that from anyone unless there is a commitment in writing in the mortgage contract.

Ameriquest loan officers must also provide good faith estimates in a timely manner, but cannot "disparage, discredit or otherwise encourage [borrowers] to disregard" the estimates. In other words, the loan officer can't tell you: "Yeah, the estimates on this sheet of paper say you'll be paying \$6,000 in fees to us, but don't believe it. You'll pay less than that."

Ditto on playing games with prepayment penalties. Loan officers cannot orally promise that, contrary to what the mortgage document says, the lender will waive or reduce your prepayment penalty when you're contacted sometime in the next six to 12 months about the possibility of refinancing. If anybody tells you that at loan application, don't believe it unless it's in writing and signed.

The settlement is exceptionally specific about an important subject many otherwise savvy consumers ignore. What's in your appraisal? Hitting the "contract price" with the use of creative searches for "comparable" properties is not in your best interest. Arriving at an accurate market valuation, with no outside interference, is the only true standard. Loan officers are prohibited from influencing appraisers to inflate values under the Amerquest settlement, but they also won't get to select the appraiser anymore, much less dictate the results. The agreement creates a series of firewalls to separate loan officers from appraisers, essentially keeping the foxes out of the hen houses. The agreement also requires provision of a copy of the appraisal to every loan applicant, not simply those who ask to see it and review it.

The point here: Don't mess with appraisals. Inflated appraisals put home buyers into houses they may not be able to afford and saddle them with debts that may eventually push them into defaults or foreclosure.

The same goes for playing fast and loose with popular "stated income" mortgages that require no hard documentation of borrower assets or income. Amerquest loan officers cannot "inflate or fabricate, or encourage [borrowers] to inflate or fabricate" earnings, bank deposits or other assets. Nor can they sign documents on behalf of their applicants. Borrowers themselves will have to sign statements certifying their incomes are accurate, and subjecting them to potential criminal penalties for "any false statements."

Regulatory overkill? Hardly. Standards such as these, and dozens of others outlined in the new settlement, should be the ethical bare minimums for the entire mortgage industry.

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