

GETTING A MORTGAGE

Not just a pair of shoes

By Mark Pearce, Deputy Commissioner of Banks, North Carolina Office of the Commissioner of Banks

“If I sold you a pair of Nikes and something went wrong, it's not my fault—call Nike.”

A mortgage broker told me this during a recent conversation about the mortgage market crisis and widespread origination of “exploding” adjustable rate loans—loans where monthly payments would increase by 30 percent even if interest rates stayed unchanged. His point, as I took it, was that brokers were simply the middle man between consumers and the array of mortgage products manufactured by lenders.

Aside from misunderstanding North Carolina law, his comment reflects a profound disregard of the licensed professional's role in the most important financial transaction most families ever make. Owning a home is how most families build wealth—wealth that can be used to send kids to college or to manage an unexpected illness. Homeownership, while not for everyone, is the well-worn path for economic citizenship in this country, and the consequences of a poor loan decision cannot be overstated. Comparing this transaction to something as mundane as buying shoes is so silly as to be offensive.

While technology and securitization has made mortgage loan originations more efficient, we have not yet reached the point where professional advice and judgment are not an essential part of the “value proposition” for mortgage brokerage. Brokers must make reasonable efforts to find their customers a good loan, which requires more than simply telling them they can qualify for one. If that is all a broker does, what justifies the thousands of dollars paid to the broker in a mortgage loan?

At the Office of the Commissioner of Banks, we are using regulatory tools to enforce the duties required by our laws and to raise the level of professional responsibility in the mortgage broker arena. Some of what we are doing is simple—when we find that a mortgage broker has made a material misstatement (e.g. overstating income) in a single loan, he will lose his license. No excuses. Zero tolerance. We have added new investigators and pulled over two dozen loan officer licenses in the last year for mortgage fraud.

Unfortunately, we rarely find fraud in just a single loan, and losing a mortgage license is not an adequate response to widespread fraud. To address this, our office worked with mortgage and banking representatives to pass a law to make it easier to prosecute mortgage fraud as a felony. I would like to thank the NCBA for its support of this legislation passed in the last session.

A broker must do more, however, than just not commit fraud. We recently stripped the license of a mortgage broker for a pattern of making loans to borrowers that were unable to afford the loans. Nearly 50 percent of this broker's loans went into foreclosure within two years of origination. His attitude was if he could get someone qualified for a loan, then he had done his job. He did not see his job to require advising customers of their difficulty in making payments when most of their income would go toward the mortgage payment. In my view, he failed his duty. While a broker should not be responsible for customers' poor financial decisions, a broker does have a duty to advise them about the risks and benefits of those decisions.

In addition to enforcing broker duties, our office is using our rulemaking authority to increase the initial education requirement for loan officers and to raise the bar on financial responsibility. We want loan officers that can manage their own credit before they are put in a situation where they are advising others in a mortgage transaction. We expect brokers and lenders to have a greater net worth—showing that they know how to run a business gives us increased confidence that they can advise customers on their financial needs.

The mortgage market crisis gives us a unique opportunity to improve professional standards for mortgage brokers. As bankers, you know the importance of working with quality third-party agents. For those of you working with mortgage brokers, I am hoping you will help us police the marketplace by keeping your standards high and your due diligence thorough.

Brokers that think they are just selling shoes probably need to be doing so. 



Mark Pearce is deputy commissioner of banks for the State of North Carolina. He oversees the regulation of mortgage lending, consumer finance lending, other non-bank lenders, as well as the North Carolina Commissioner of Banks' legal and consumer affairs activities. Pearce is a member of the American Association of Residential Mortgage Regulators and chairs the Conference of State Bank Supervisors' Subcommittee on Mortgage Policy.