

MINUTES
of the
FIFTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT
OVERSIGHT COMMITTEE
November 9, 2011
Mortgage Finance Authority Office
344 Fourth St. SW
Albuquerque, New Mexico

The fifth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Joni Marie Gutierrez, chair, at 10:05 a.m. on November 9, 2011 at the office of the MFA in Albuquerque, New Mexico.

Present

Rep. Joni Marie Gutierrez, Chair
Sen. Nancy Rodriguez, Vice Chair
Rep. Alonzo Baldonado
Sen. Mark Boitano
Rep. Ernest H. Chavez
Sen. Gerald Ortiz y Pino

Absent

Rep. Nate Gentry
Sen. Cisco McSorley

Advisory Members

Rep. Thomas A. Anderson
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra Jeff
Sen. Lynda M. Lovejoy
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Sander Rue
Sen. David Ulibarri

Sen. Rod Adair
Rep. Rick Little
Rep. Dennis J. Roch

Staff

Claudia Armijo, Legislative Council Service (LCS)

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Approval of Minutes

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

November 9

Welcome

Representative Gutierrez welcomed the members and guests and reminded them that the meeting was being web cast. She then asked the committee members to introduce themselves, which they did. Next, the chair asked Jay Czar, executive director for the MFA, to make his opening remarks.

MFA Update

Mr. Czar began by welcoming the members and guests. Next, Mr. Czar advised the members that the MFA staff presented the MFA's proposed budget to the Legislative Finance Committee at a meeting on October 21, 2011. He noted that the information was well received, but the MFA received no guarantees for funding.

Mr. Czar next told the members that the MFA staff would be meeting with officials from the Gallup School District and with the Gallup City Housing Authority on November 10, 2011 in Gallup. He also noted that some of the MFA's staff would be participating in the qualified allocation training for low-income tax credit subsidies on November 17, 2011.

Report on Residential Foreclosure Mitigation Strategies

Gina Hickman, deputy director of finance and administration for the MFA, presented to the members a report on residential foreclosure trends in New Mexico and nationally. She advised that although trending upward, New Mexico has still not been as hard hit by foreclosures as many other states, particularly in Nevada, Arizona and California. Ms. Hickman directed the members' attention to the MFA's handout dated November 9, 2011 for additional and detailed information, including a copy of the *National Delinquency Survey* for the second quarter of 2011.

Erin Quinn, MFA senior policy and program advisor, also spoke to the members on the topic of residential foreclosures. Ms. Quinn provided an overview of some of the foreclosure mitigation programs implemented by various state housing agencies. The details of the overview are found in the handout behind Tab 1. Ms. Quinn noted that foreclosure mitigation programs range from counseling for at-risk homeowners to actual loans. She noted that the various programs show mixed outcomes. Programs such as those involving payments to homeowners can be extremely costly, so few states have those types of programs in operation. She also noted that the federal government has provided direct dollars to certain states suffering extremely high residential foreclosure rates, but advised that, since New Mexico's foreclosure rate has been below that of most other states, New Mexico has not received those targeted federal dollars.

Members requested that the MFA staff provide a presentation for the committee during the 2012 interim on foreclosures on Indian lands. The MFA staff agreed to review the matter and provide the presentation.

Changes to MFA Rules and Regulations

Marjorie Martin, in-house counsel for the MFA, spoke to the members regarding proposed rule changes being considered by the MFA board. She noted that the changes are provided in the handout behind Tab 2. Ms. Martin noted that the changes are primarily ones for clarification purposes or to update language. Members of the committee made a motion to accept the proposed changes. The motion passed without objection.

Final Review and Endorsement of Proposed Legislation

Mr. Czar led the discussion regarding the MFA's proposals for the upcoming legislative session by reminding the members that in 2009, the federal government awarded more than \$95 million in stimulus funds to the MFA. Using every dollar effectively, the MFA restarted 18 stalled affordable housing construction projects, weatherized 4,000 homes and helped more than 7,000 families avoid homelessness.

Mr. Czar then explained that next year, all of the stimulus money will be spent. However, New Mexico's need for quality affordable housing is greater than ever. He continued saying that, except for small appropriations, the MFA has refrained from asking the legislature for funding since 2009. This year, the MFA intends to request \$7,750,000 to ensure the viability of some crucial programs. He followed by assuring committee members that state funds will be leveraged many times over to fully maximize the investment.

Mr. Czar then told the committee that the MFA would be seeking:

- 1) an appropriation of \$5 million for the New Mexico Housing Trust Fund;
- 2) an appropriation of \$1 million for the NM EnergySmart Program;
- 3) an appropriation of \$1 million for homebuyer education and foreclosure mitigation;
- 4) an appropriation of \$500,000 for disaster relief and emergency repairs for low-income residents;
- 5) \$250,000 recurring funding for the oversight of the Regional Housing Authority; and
- 6) in lieu of the requested appropriation for the oversight of the Regional Housing Authority, legislation that would transfer Regional Housing Authority oversight to the Department of Finance and Administration (DFA).

Senate Memorial Working Group Report

Wayne Ciddio, from the Regulation and Licensing Department (RLD), along with Bill Brady, the chair of the Senate Memorial 2 working group, addressed the members regarding the recommendations of the working group and its subsequent legislative proposal for the licensure of home inspectors.

Mr. Brady began by reminding the committee that the working group was formed as a result of Senate Memorial 2, sponsored by Senator Tim Eichenberg during the 2011 legislative session. The memorial called for the establishment of a working group to study and make recommendations to the legislature about state licensing of home inspectors.

Mr. Brady continued explaining that Senate Memorial 2 was the result of discussions that

began in August 2010 among the RLD, the New Mexico Real Estate Commission and the Realtors Association of New Mexico about the need for licensing. The focus of those discussions was how minimum education, training and experience standards for home inspectors could be put in place so that consumers and home inspectors could be protected without imposing undue regulatory burdens.

Mr. Brady told the committee that efforts to license home inspectors date to 2003, when former Senator Joseph Fidel introduced a bill in the state senate very similar to the draft legislation being considered. Mr. Brady said he lacks any institutional memory to help understand why that bill did not pass and why the issue lay dormant until now. However, the issues that were important in 2003 are equally important today. A home inspection is an important part of a residential real estate purchase. An inspection provides a consumer with important information about the condition of a home that the consumer is considering purchasing and helps the consumer make informed decisions. He further opined that consumers deserve the same degree of protection for home inspections that exist for virtually every other component of a real estate purchase.

Mr. Brady told members that New Mexico is one of only 16 states that does not license home inspectors. As a result, there are no minimum training, experience or continuing education requirements for a person to represent as a home inspector or to engage in the home inspection business. This also means there are no objective criteria for consumers to rely upon in hiring a home inspector. According to Mr. Brady, although the New Mexico Real Estate Commission does not investigate complaints against home inspectors, it does receive and investigate complaints relating to property condition issues to the extent that real estate brokers might have been aware of and failed to disclose to prospective buyers. He continued saying that a good, thorough inspection by a qualified inspector helps consumers make informed decisions and enhances the credibility and reputation of the home inspection profession. A thorough inspection by a qualified inspector allows a real estate broker to do a better job for the broker's customers by helping them identify and deal with property condition issues before a sale is finalized instead of afterwards when costly litigation is often the only recourse a consumer has.

Mr. Brady told members that recognizing the licensing of home inspectors will become a reality only if there is broad-based support from home inspectors and professionals in related fields. The working group, which consists of six home inspectors and a real estate broker, has been meeting regularly since April and has conducted public meetings in Las Cruces, Santa Fe and Albuquerque. The purpose of the meetings was to hear the concerns and gather input from home inspectors and real estate brokers in order to present the committee with findings and recommendations for proposed legislation.

Mr. Brady explained that the draft legislation before the committee is modeled after other New Mexico licensing laws and laws from some of the 34 states that currently license home inspectors. The draft legislation provides for a five-member home inspector licensing committee administratively attached to the RLD, and the members would be appointed by the governor. The committee would have the authority to promulgate rules, collect licensing fees, establish

prelicensing and continuing education requirements, perform criminal background checks and discipline licensees pursuant to the Uniform Licensing Act.

The draft legislation defines "home inspection" as a noninvasive, nondestructive inspection for the purpose of providing a professional written opinion of the condition of a building and its carports and garages and reasonably accessible installed components and building systems. Mr. Brady noted that the definition he gave is an abbreviated one, but the detailed definition can be found in the draft legislation.

An applicant for licensure as a home inspector would be required to have reached the age of majority, be a legal resident of the United States, submit to a criminal background check, have completed 40 hours of field training and 80 hours of classroom instruction, pass a proctored national examination and maintain an errors and omissions insurance policy. Licenses would be issued for three years, and a licensee would be required to complete 30 hours of continuing education every three years as a condition of license renewal.

The licensing committee would have the authority to waive prelicensing training requirements if an applicant has been active as a home inspector for at least three years prior to the effective date of the act, has passed a proctored national exam or is currently licensed as a home inspector in another state.

Mr. Brady continued by saying that in the interest of not stepping into the territories of other professionals whose work might involve the structural or functional aspects of homes, the draft legislation would exempt from home inspector licensing a variety of other professionals, including contractors, engineers, architects, electricians, plumbers, air conditioning technicians, appraisers, code enforcement officials, energy auditors and others acting within the scope of their professional licenses.

The findings of the working group that went into drafting this legislation include the following.

*Although the approximately 45 home inspectors who attended the public meetings have concerns about how licensing might increase the cost of doing business, there has been general support for licensing, provided that licensing costs can be contained and bureaucratic requirements can be minimized.

*In response to concerns about the potential for increasing the costs of doing business, specifically, the cost of insurance, the working group amended the draft legislation to provide that licensees would only have to carry errors and omissions insurance, and not both errors and omissions and general liability insurance as originally proposed.

*Although there was concern among home inspectors attending the meetings that being attached to another board would overshadow or even consume the home inspector licensing committee, the working group believes that concern was somewhat alleviated by the fact that the

committee, as proposed in the draft legislation, would be independently appointed by the governor, and that attachment to another board would be a way of keeping administrative overhead costs and licensing fees down.

*Another concern was that the requirement for fingerprinting of home inspector licensees is overkill. That concern was offset by the acknowledgement that home inspectors sometimes have unsupervised access to people's homes, and it is important for consumers to have some level of assurance that inspectors have been subject to a background check.

*Some working group members were of the opinion that a self-regulating registration act would be less costly and easier to administer than a licensing act and would still provide consumer protection by setting standards for registration, provide consumer access to registration information via a public web site, require minimum general liability insurance and a surety bond and provide for a criminal penalty for violation of the act. The registration act proposal did not provide for any governmental agency oversight of home inspectors.

*At the last meeting of the working group on October 14, members voted unanimously to bring to the committee the proposed draft legislation.

*It has been difficult to determine the exact number of potential home inspector licensees. The number is somewhere between 110 and 160.

*Given the relatively small number of licensees, a home inspector licensing committee cannot generate enough revenue through licensing fees to be entirely self-supporting.

*The committee would have to be administratively attached to another licensing board within the RLD, such as the New Mexico Real Estate Commission, in order to be able to share administrative overhead costs so that licensing costs would not be prohibitive to potential home inspector licensees.

*The working group recommends that the act have a delayed implementation date of at least one year to allow for rulemaking, budget planning, committee appointments and other administrative details necessary to get the committee functioning.

At the conclusion of his prepared presentation, Mr. Brady introduced and thanked the members of the working group that were present for the oversight committee's meeting. He introduced home inspectors Paul Norris, Charles Smith, William Richardson, Doug Ramsey and Ron Givens, as well as real estate broker Duane Jokinen.

After a brief discussion and some questions from committee members, the chair thanked the presenters and directed a discussion regarding the MFA's proposed legislation.

Members voted upon motions and seconds. All of the MFA'S legislative proposals were endorsed without objection except the proposal to transfer the oversight authority for the

Regional Housing Authority to the DFA and the proposal for an appropriation for homebuyers' education and foreclosure mitigation counseling. Those two proposals were endorsed by the committee. However, some members voiced concerns that such counseling and education has little effect on the outcomes in foreclosure cases.

With no further business, the meeting adjourned at 12:45 p.m.