

**MINUTES
of the
FOURTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT
OVERSIGHT COMMITTEE**

**September 3, 2010
Mortgage Finance Authority Office
Albuquerque, New Mexico**

The fourth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Jose A. Campos, chair, at 10:15 a.m. on Friday, September 3, 2010, at the office of the MFA in Albuquerque, New Mexico.

Present

Rep. Jose A. Campos, Chair
Sen. Nancy Rodriguez, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano
Rep. Ernest H. Chavez
Sen. Eric G. Griego
Rep. Joni Marie Gutierrez
Sen. Cisco McSorley

Absent

Sen. Rod Adair
Rep. Sandra D. Jeff

Advisory Members

Rep. Thomas A. Anderson
Rep. Andrew J. Barreras
Rep. Roberto "Bobby" J. Gonzales
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Dennis J. Roch
Rep. Benjamin H. Rodefer
Sen. Sander Rue

Guest Legislator

Rep. Miguel P. Garcia

Staff

Kim Bannerman, Staff Attorney, Legislative Council Service (LCS)
Claudia Armijo, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Welcome

Representative Campos welcomed committee members and guests to the meeting, and the members introduced themselves. He advised the members that the meeting was being webcast. Consequently, he asked that side conversations be kept to a minimum.

Update on the New Mexico Homebuilding, Real Estate and Manufactured Housing Industries

Homebuilding Industry

Michael Sivage, chief executive officer for Sivage Community Development and vice chair of the MFA board of directors, advised the committee on the current state of the homebuilding industry in New Mexico. He told the members that in the new home market, prices are going down. However, he explained, new home sales are totaled in the aggregate, so they include all new home sales, including the smallest new homes. Because of this and the fact that smaller homes cost less, new home sale prices in the aggregate indicate a lower price. To the contrary, sales figures for resale homes reflect the reality of the actual numbers of homes sold and sales amounts. He also explained that new home starts versus new home permits are different. Permits are on record and new home starts figures are taken from data collected by the United States Census Bureau. Consequently, some permit levels are higher than new home starts levels because often a permit is issued, but the home for which the permit is issued is never built.

Rather than relying on permit level, Mr. Sivage opined that the most reliable new home sales information is reflected in the housing trends, which is based on housing starts. Nationally, homebuilding starts continued to decline for single-family and multifamily homes. Additionally, sales of new homes since June 30, 2010 have fallen dramatically. Mr. Sivage noted that in New Mexico, 50% of all new home permits are being issued to two major homebuilders that are large companies. This indicates that small New Mexico construction and homebuilding businesses are suffering. Also, the first-time homebuyers tax credit, which expired earlier this year, was a success at creating demand. Once the tax credit ended, the demand abruptly stopped. The move-up market (consumer's moving from a smaller house to a larger house) is struggling because there is an oversupply of inventory. These move-up buyers typically have a home to sell before they can buy their move-up home.

Mr. Sivage advised the members that there is a close correlation between jobs and housing. The relationship is one-to-one, meaning one job created for one new housing start. As New Mexico is currently losing jobs, housing starts are down. He further noted that New Mexico led the country for most job losses from June 2009 to June 2010. Until the

unemployment numbers drop and New Mexico can attract new jobs, Mr. Sivage thinks new housing starts will remain low.

Another major problem in the new housing market is the high foreclosure rate. This creates a flood of existing homes to sell, so new homes are not necessary. He told the members that, nationally, over 50% of the homes falling into foreclosure are not subprime loans. In fact, one of the biggest foreclosure problems involves non-occupant investors who speculate in housing. There is a huge problem with homeowners who are "underwater" in their properties, and many are simply making decisions to walk away from their properties. This results in more bank-owned properties.

The financial crisis is leading to fewer quality homes being built. According to Mr. Sivage, a lot of homebuilders are currently selling their inventories at a loss, which gives them less money to start new projects. Also, while homebuilders can actually build a new home now for less than at this time last year, regulations and requirements are becoming more stringent, which leads to the new home not offering the same value and features as a home built a few years ago.

Mr. Sivage said that one of the most significant issues faced by new home builders, sellers and buyers is New Mexico's appraisal system. Since an appraisal is required to get a mortgage on a home, the appraisal value is everything. He noted that homebuilders are building model homes, getting them appraised and then finding that the appraisals are coming in for a lower amount than the actual cost of building the home. Since New Mexico is a non-disclosure state, it is sometimes difficult, if not impossible, for appraisers to get comparables (information on comparable sales). Comparables are required to get an accurate appraisal of a property, so this lack of information results in a big problem, leading to inaccurate appraised values. On the other hand, Mr. Sivage gave an example of a lot that he paid \$200,000 for that recently appraised for \$50,000. However, the assessor valued the lot at \$100,000 for property tax purposes. Mr. Sivage objected to the assessed value because it does not make sense to pay taxes on property at a rate reflecting twice the value of the property. He continued, explaining that when a homebuilder sells a new home, if the appraisal comes in \$20,000 below the sale price, the seller must decide whether to take a loss on the sale because the bank will not approve a mortgage for an amount higher than the appraised value. Again, the appraised values are simply not accurate, and a lot of that is due to a lack of comparables.

Another major problem facing homebuilders is acquisition, development and construction financing. This type of financing is not available, and large banks are not lending to the small businesses. A number of small homebuilding businesses are simply going out of business. Mr. Sivage proposed some possible solutions to the housing problems. He suggested the need to look at rent-to-own programs. He also indicated that the MFA could consider lending programs for underfunded segments of the homebuilding community. He cautioned the committee members about the potential negative impact of any proposed legislation that would impose higher impact fees and more stringent regulations. He noted that New Mexico has some of the most stringent building regulations in the nation.

Next, Mr. Savage suggested that perhaps the legislature should consider instituting zoning regulations that allow rental units to be located on the same lot as a single-family home, as well as providing tax credits for out-of-state buyers as incentives for purchasing homes in New Mexico.

Mr. Savage relayed to the committee members that he expects new home prices to stabilize and for the price per square foot to increase. He added that he believes foreclosure rates will continue to rise. He noted that the demand for home equity lines of credit is down as a result of many homeowners losing value in their homes and lenders imposing tighter borrowing restrictions. Fannie Mae and Freddie Mac are currently being reorganized, and this is affecting lenders. He noted that for the first time ever, some policymakers are questioning whether home ownership is always a good thing. Lastly, Mr. Savage noted that many young people graduate from college in New Mexico and then leave the state to find employment. He suggested that New Mexico needs to find a way to keep those college graduates in the state.

There was a discussion about new housing permits and whether they had expiration dates. Mr. Savage said that there is an expiration date with each permit, but the date varies. Typically, he said, a permit is good for one year. When asked by committee members which of New Mexico's building codes are excessive, Mr. Savage noted that New Mexico adopted the 2009 Model Energy Code. He added that he would need to report back to the members on the specifics of New Mexico's building codes.

As a result of questions by committee members regarding pricing and appraisals, Mr. Savage explained that, in an ideal world, builders would determine costs and then add a markup for land prices, with the cost of the land ranging from 16% to 30% of the final sale price of a new home. When the builder buys the land at a lower price, the new homeowner gets more value in the actual home purchase. He further explained that in southwest Albuquerque, a finished lot may average a cost of \$35,000 plus \$12,000 for impact fees, whereas a similar lot in northeast Albuquerque would likely cost \$200,000. In reference to the approaches that appraisers use for appraising homes, Mr. Savage noted that they have three sources of information: (1) the cost of the home, which they do not use but, in his opinion, they should use; (2) income, which is not used in appraising residential homes; and (3) comparable sales. Again, since comparable sales information is difficult to come by, appraised values are often inaccurate. When asked again by the members what legislators might do to positively affect the appraisal situation, Mr. Savage recommended a forum with the county assessors and others in the industry, including appraisers. He said that a huge issue continues to be the difference between a property's appraised value and its assessed value. In his opinion, the assessor should either accept the appraised value or challenge it on the homeowner's behalf. He said a forum involving all of the players in the housing industry could be useful to discuss the entire valuation methodology. Regardless, he emphasized, cost should be considered in each home's appraised value. He also noted that on a national level, there is a new Home Value Evaluation Code of Conduct. This code requires that a seller or buyer cannot arrange to use the services of a specific appraiser. Rather, an appraisal is requested, and the parties do not know which appraiser will be selected. Mr. Savage noted that perhaps the legislature should reevaluate whether New Mexico

should become a disclosure state. He also noted that the closing of the sale of an existing home is a recorded document, whereas when a new home sells, there is no recorded document involved.

Mr. Sivage explained to the committee members that new homebuilders evaluate what homes sell for in certain communities and what amenities a typical home in that community has. The builder then structures its product and pricing along with features per square foot. Then, the homebuilder backs out the cost to build, the sales commission and closing costs. What is left to consider is the cost of the land.

Next, there was a discussion about the issue of "tax lightning". Members noted that about seven New Mexico counties are experiencing problems as a result of tax lightning. It was noted that new homes built since 2001 did not get property tax rollbacks. Additionally, property taxes are 35% higher on newly constructed homes.

Committee members also discussed the ramifications of appraisals for properties coming in lower than expected. Although refinancing at today's lower mortgage interest rates could help many New Mexico homeowners, appraised values are typically coming in low, so the homeowners are not able to take advantage of the savings that would coincide with a lower interest rate. It was noted that there was a bill introduced in the 2010 session that would require appraisers to provide proof regarding their appraisal determinations and to carry liability insurance. An appraisal is an estimate of value, and it was noted that there is no appeal process when an appraised value is issued. Once the appraisal is determined, it is a final determination. Many members indicated their desire to see homebuilders, realtors and the government reevaluate the home appraisal process and look at the possibility of an appeal process for appraisals.

Some members inquired about the correlation between jobs and housing starts. They asked if the income or salary paid for a job had an impact on the job-to-home-starts ratio. Mr. Sivage responded by saying that the employment and permit rate included multifamily homes. He added that 30% of a homeowner's income could support the home cost, adding that an individual making \$45,000 a year could probably afford a home with a \$145,000 sale price. He indicated that all jobs are good jobs and contribute to the job to home ratio.

Committee Business

After Mr. Sivage finished his presentation, a motion was made and seconded to approve the minutes from the committee's August 6, 2010 meeting held in Las Cruces, New Mexico. The motion passed unanimously.

Real Estate Industry

After approval of the minutes, the members were addressed by Diane Moehlenbrink, deputy director of operations and communications, Realtors Association of New Mexico, and Wayne Ciddio, executive secretary, New Mexico Real Estate Commission. Ms. Moehlenbrink began by concurring with Mr. Sivage's premise that the most important housing information for

New Mexico is information regarding housing trends. She noted that after a strong showing of home sales in New Mexico during June 2010, the pace of sales dropped off sharply in July. This was due to the expiration of the federal tax credit. She added that 1,100 single-family home sales were reported to the Realtors Association of New Mexico during July 2010. That number reflects nearly 24% fewer sales than the June 2010 total of 1,455 and was lower than the activity for both July 2008 and July 2009. The median price of New Mexico homes sold during July 2010 was \$181,000. This was a slight increase from June 2010, when the median price was \$179,000, and from July 2009, when the median price was \$177,700. These numbers reflect a national trend in rising home prices.

Ms. Moehlenbrink noted that New Mexico's median home prices are being influenced by foreclosure activity and distressed sales. According to Realty Trac's second quarter U.S. foreclosure market report, New Mexico ranks near the middle of the 50 states in foreclosure activity. Sandoval and Bernalillo counties lead the state in foreclosures. She added that real estate is local, saying that most of the Santa Fe city residents cannot afford to buy a home in the city. Contrasting that fact, she noted that most of the citizens of Los Alamos can afford a median-priced home in that city. The ability to buy a home is based on income and affordability. But she noted that if buyers do not have the 20% down payment, they can face problems getting a mortgage. She continued by saying that, overall, the data do not indicate that affordability is a problem in New Mexico, but defaults on loans in certain communities, coupled with buyers' lack of down payments, can be an issue.

Mr. Ciddio began by noting that New Mexico Real Estate Commission is the state agency responsible for licensing real estate brokers in New Mexico. He presented the committee with information regarding the effect of the housing market on licensing and, accordingly, oversight of real estate brokers. He told the members that in the past year, 1,400 licensed brokers in the state did not renew their licenses due to a lack of business. As a consequence, the commission has had to adjust its budget down 11%. The commission now operates with fewer staff to investigate complaints or handle disciplinary hearings. Unfortunately, the commission still receives a high number of complaints.

One reason for more complaints against brokers is that foreclosures and short sales have flooded New Mexico's housing market. There has been a problem with realtors holding themselves out as experts on short sales, when in many instances they are not. This situation causes owners of distressed property to look for ways to sell their homes at high risk. Another problem has been the onslaught of drive-by appraisals. This is when banks ask appraisers to issue appraisals at a flat fee, putting the appraiser in jeopardy of violating the code of conduct for appraisers. Mr. Ciddio also noted that there has been an increased level of unlicensed activity because many realtors cannot afford to renew their licenses. Conducting business without a license is a petty misdemeanor.

This was followed by a general discussion among the committee members concerning the various types of complaints the commission is receiving. Mr. Ciddio noted that the majority of

complaints involve errors and omissions on behalf of the realtor or broker. Additionally, there are complaints about brokers rendering opinions on issues outside their area of expertise.

Manufactured Housing Industry

Cathy Vickers, the chair of the New Mexico Manufactured Housing Task Force explained that the task force was formed two years ago because of problems in the manufactured homes market relating to sellers, buyers, lenders and realtors. She told the members that zoning regulations passed in 1987 allow manufactured housing to be located next to regular housing in all counties in New Mexico. However, covenants can keep manufactured houses out of a community if those covenants have never been broken. Homeowners of manufactured housing can get their homes assessed as real property. Most assessors do not identify the manufactured home as a manufactured home. There is still only one insurance company in New Mexico that will insure these manufactured homes assessed as real property.

Ms. Vickers noted that the task force has worked on developing a process to get troubled manufactured home properties sold. She said there have been a lot of problems, citing the fact that the Regulation and Licensing Department (RLD) has determined that realtors cannot sell manufactured homes, even if a home is attached to land. According to the RLD, anyone, including realtors who sell more than one manufactured home per year as chattel (personal property), must be licensed by the Manufactured Housing Division of the RLD. She said that the task force's priority this year is to work on getting lenders comfortable with providing loans for manufactured housing.

Mary Martinek, the government affairs director for the Realtors Association of New Mexico, directed the members' attention to the information in her handout. The first item was a copy of a procedural memo, dated January 15, 2009, from the Motor Vehicle Division (MVD) of the Taxation and Revenue Department. The memo provides that if certain conditions are met, the vehicle services unit can now deactivate the title to a manufactured home and issue a new interactive title, even though the home is currently assessed as real property. The handout also provided the pertinent section of the MVD vehicle procedures manual, Chapter 16, for the deactivation of title for a manufactured home. This section outlines the basic steps required to deactivate the title. Also included in the handout was a letter from Kelly O'Donnell, superintendent, RLD. The letter, addressed to real estate brokers, advised that a review by the legal department of the RLD determined that the inspection of manufactured homes prior to listing for sale, while advisable, is no longer required. The superintendent noted that installation inspections are required when a new manufactured home is first installed or when an existing home is moved to a new location. A pre-owned home that remains in its original location is assumed to have been inspected when it was first installed and, therefore, no additional inspections are necessary. In the letter, Mr. O'Donnell encouraged real estate brokers to obtain proof that an installation inspection occurred when a manufactured home was originally installed, noting that for homes installed after January 2004, the Manufactured Housing Division of the RLD should have a record of the inspection through the Kiva Online Permit Tracking System.

Next, Ms. Martinek advised the members that loans made on manufactured homes are portfolio loans, meaning they cannot be sold on the secondary market like mortgages on real property. She further noted that interest rates for loans on manufactured homes are significantly higher. She told the members that the foreclosure rates on manufactured housing in New Mexico are the lowest in the country. Lastly, she clarified that there is not a limit to the number of manufactured homes a licensed realtor may sell in New Mexico, as long as each home is already attached to land.

Conflict-of-Interest Issues — MFA's Bylaws and Code of Conduct and the MFA Act's Conflict-of-Interest Provisions

Marjorie Martin, general counsel for the MFA, spoke to the members regarding the conflict-of-interest provisions in the MFA's bylaws and the pertinent code of conduct and statutory provisions. She directed the members attention to a handout that contained the relevant sections of the MFA Act, Section 58-18-25 NMSA 1978, and she read the statutory provisions aloud to the members. She said that all new MFA employees are required to sign a disclosure statement. She also provided a handout outlining examples of conflict-of-interest provisions included in the MFA program contracts. There are provisions forbidding such things as: the improper influence of an officer or employee of any state, federal or local agency, a member of Congress, an officer or employee of any agency or an employee of a member of Congress in connection with the awarding of a federal loan; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. There are restrictions on funds paid to lobbyists and members of Congress, and MFA commissioners shall not benefit from any agreements. Lastly, Ms. Martin provided the committee with copies of the Disclosure Statement provisions used in the MFA's request for proposals (RFPs). The RFPs require a statement from would-be providers disclosing:

- 1) any political contribution or gift required to be reported under the Lobbyist Regulation Act made by an offerer or any member of the offerer's firm to any elected official of the state of New Mexico in the last three years;
- 2) any current or proposed business transaction between offerer and any MFA member, offerer, or employee; and
- 3) any other conflict or potential conflict that may give rise to a claim of conflict of interest.

Ms. Martin concluded by offering her personal opinion that all potential conflicts of interest and any appearances of conflicts of interest should be eliminated. Committee members thanked her for her presentation and noted that they appreciate the information.

A motion was made to require the MFA to report by the September 30, 2010 meeting as to the cost of an independent audit of the bylaws, rules of ethics and code of conduct, including the policies and procedures contained in the MFA manual. The committee members want to

know how much it will cost to provide a report and also how the MFA could finance such a report. The motion also requires a determination of best practices regarding the use of an outside audit. The motion was seconded and passed unanimously. When asked by members if there are best practices that she is aware of, Ms. Martin replied no. Lastly, it was noted and recommended that perhaps one of the New Mexico state business schools could perform the requested audit.

Regional Housing Authority Update

Joseph Montoya, deputy director of programs for the MFA, spoke to the committee regarding the recent consolidation of the regional housing authorities. He explained that two authorities were consolidated, and he directed the committee members' attention to a handout containing a diagram illustrating the changes. Included in the handout is a copy of Senate Bill 20, which became law in 2009. The new law amends regional reporting requirements as outlined in the handout.

There being no further business, the meeting was adjourned at 12:40 p.m.