A Matter of Ethics
A uniform code of ethics may help mortgage originators gain the public’s trust

By Kevin Boileau, CEO, BPI Consulting Group Inc.

In the July residential edition of Scotsman Guide, Kevin Boileau addressed the professional status and ethical terrain of mortgage originators (“Are We Professional,” July 2006). This month, Boileau tackles ethical problems and the benefits of implementing a uniform code of ethics for the mortgage-origination industry.

When they do business with a mortgage originator, consumers generally believe that they enter into a relationship of trust. Still, many in the mortgage industry know that there are several practices that involve yield-spread premiums, rate-locks, improperly completed good-faith estimates and more in which originators do not fully disclose all information that a reasonable consumer would want to know in a timely fashion.

In order to be recognized as a professional, all originators must be held to fiduciary standards whereby they owe the highest good faith to all consumers. This includes implementing and adhering to a uniform code of ethics.

Deconstructing codes of ethics
Rate-locks, yield-spread premiums and good-faith estimates all involve disclosure in one of four types: 1. full disclosure; 2. partial-but-true disclosure; 3. deceptive disclosure; and 4. problems associated with the timing of disclosure.

A quick review of the Mortgage Bankers Association code of ethics shows that there is not a clear provision that governs disclosure. In fact, this code also does not address the issue of honesty.

In comparison, the National Association of Mortgage Brokers code of ethics, while mandating that members shall conduct business in a manner reflecting honesty, does not specifically define honesty. This allows for many interpretations of honesty, and there is no objective standard to which members can be held.

This is a problem. Because code provisions are expressed with great ambiguity, they are susceptible to moral subjectivity. This means that, ultimately, just about anything goes. And the “anything goes” policy continues to motivate our political and legal machinery to create additional external regulation of the mortgage industry.

Unfortunately, external regulation typically comes with more-serious sanctions than the industry itself would mandate through continuing education, disciplinary proceedings with retraining and so forth. Further, such sanctions would be less efficient and would decrease industry profits.

We have a choice. We can proactively regulate ourselves internally with the attempt to educate, train and improve the moral fiber of mortgage originators, or we will continue to risk greater external regulation by various legal bodies.

Another problem with vague codes of ethics is that they do not allow someone to rationally separate professional obligations from personal obligations. Again, this ultimately results in moral subjectivity, whereby all mortgage originators interpret ambiguous code sections in terms of their own personal preferences.

If codes of ethics were more precise, however, mortgage-industry workers could clearly carve out a separate ethical domain of professional practice. Consider the distinction between real estate agents and Realtors. Realtors have ethical duties that real estate agents do not have, and these are clearly spelled out in a written code.

Moving toward professional status
There are many benefits to creating a uniform code of ethics and to bringing mortgage originators into professional status.

First, if the requirements of professional status are clearly designated — and if it is mandated that each mortgage originator become a professional — originators’ status will be clear. In addition, if loan originators must be recognized as professionals officially, then they will owe fiduciary duties to all consumers.

These duties can be clearly delineated in a new, national code of ethics so that mortgage originators will know precisely which standards they must meet.

In addition, for true professional status to be possible, there should be state-sponsored continuing-education programs for mortgage originators. Although many believe that punishment is the only answer to penalizing offenders, some argue that using remedial education as a first response may be more effective in the long run. Their view is that punishment doesn’t change behavior positively; education, on the other hand, can serve to develop their moral state.

Further, mortgage originators can only achieve professional status by passing a certifying exam that tests for substantive knowledge of the industry and of ethical standards.

Finally, official professional status can be mandatory or voluntary. If it is mandatory, then all originators will have to pass qualifying exams nationwide. The general public will then know that every mortgage originator is someone to be held in trust.

If professional status is voluntary, then consumers will have a choice. They can choose an originator who is not officially designated as a professional and therefore do business at arm’s length, or they can choose to do business with an originator who is officially recognized as a professional. This would give consumers an informed choice.

A benefit to the voluntary professional-status option is that disciplinary proceedings would be internal matters and could avert legal action. Those without professional status, on the other hand, would be subject to being regulated only by the law, in which case proceedings would be public and penalties much harsher.

By creating clear machinery for the maintenance of standards of practice, the industry can save lost dollars and lost time, and consumer confidence in the mortgage industry will ultimately increase.

Kevin Boileau, Ph.D., J.D., LL.M., is a Seattle psychotherapist and lawyer who specializes in cooperative conflict resolution for individuals and businesses. He is the CEO of BPI Consulting Group Inc. and is publishing a book on ethics and psychology this year. Visit kevinboileau.com or bpciconsulting.net. Reach Boileau at (206) 297-9137.