

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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*The purpose of the Lenders Update is to provide a “heads-up” of new legislation and regulations affecting the mortgage lending industry. We try to provide brief summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new material in detail where relevant to them. For your convenience, the applicable statute, regulation or cases can be easily identified in the summary.*

*Our Update includes changes in legislation available to Alt & Associates by August 15, 2005*

## FEDERAL ISSUES

### JUNK FAX

The “Junk Fax Prevention Act of 2005” became public law **July 9, 2005**. Most importantly, the new law provides an exception to allow sending unsolicited fax advertisements to individuals with whom the sender has an established business relationship. The Act defines “established business relationship” as a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of either:

- ? A purchase or transaction within eighteen months immediately preceding the date of the unsolicited fax advertisement, or
- ? The subscriber’s inquiry or application regarding products or services offered by the entity within three months immediately preceding the date of the unsolicited fax advertisement

After October 9, 2005, the FTC may adopt changes to this definition of “established business relationship”.

## STATE ISSUES

### LOUISIANA

Beginning **August 15, 2005**, Louisiana House Bill 446 requires residential mortgage lender license applicants to pass a written examination. The required examination will test the applicant’s knowledge of state and federal laws and regulations governing residential mortgage lending, mortgage loan closing and servicing practices, types of residential mortgage loan products available to consumers, and other related topics.

An exemption from this testing requirement is granted to an applicant who has received a bachelor's degree in an area related to finance, banking, or business administration from an accredited college or university and has had twelve months experience in the mortgage lending field performing the duties of a mortgage broker, mortgage lender, or originator within the three years immediately preceding the date of the application.

## **NEW HAMPSHIRE**

Effective **July 1, 2005**, New Hampshire Senate Bill 223 updates and clarifies a number of licensing issues. Some of these changes may appear minor but non-compliance may result in hefty fines.

### Authorization

Persons licensed as mortgage bankers may engage in the mortgage broker business without obtaining a separate license. A license also entitles agents and originators of the licensee to engage in the business of making or brokering mortgage loans.

### Renewal and Examination

A renewal fee of \$500 for the principal office license and each branch office must be submitted with the application for license renewal.

### Changes

A licensee must submit written notification to the department of the addition or deletion of a principal no later than 30 days after such change. Each new principal must authorize the Commissioner to conduct a background check. The Commissioner will investigate management and ownership changes including each principal's qualifications and business history. The licensee must disclose any injunction or administrative order that has been issued against the principal and whether the principal has been convicted of a misdemeanor involving the lending industry or convicted of any felony, prior to the Commissioner's approval of such change.

### Records

When the Commissioner requests a loan list or other similar document from a licensee from which to select particular files for review, the licensee must ensure that the list or document is received by the Commissioner within seven calendar days, and send the files selected by the Commissioner within fourteen calendar days.

### Closing

Finally, a loan closing requires good funds and the signing of a note, and the disbursement of the mortgage loan funds. Good funds (See New Hampshire § RSA 477:52) do not include a lenders own check, until finally collected.

## **NEW YORK**

Effective **November 9, 2005**, New York Senate Bill 48 imposes fines for the failure to record a certificate of discharge in a timely manner. Fines increase based on the amount of time passed since the certificate was first eligible for recording.

Whenever a mortgage has been paid in full, a certificate of discharge of mortgage and a satisfaction of mortgage must be presented for recording within thirty days. Failure to present a certificate of discharge for recording will result in the mortgagee being liable to the mortgagor in the amount of \$500 if not done within thirty days. This liability increases to \$1000 if he or she fails to present the document for recording within sixty days, and increases to \$1500 if not presented within ninety days. The penalties are the same for failure to present a satisfaction of mortgage.

## **TENNESSEE**

Tennessee Senate Bill 1082 became effective **May 28, 2005**. The Act requires a secured creditor to issue a payoff statement and send it to an entitled person or authorized agent within ten days after the effective date of a proper notification request. The payoff statement must contain:

- ? The date on which it was prepared and the payoff amount as of the requested payoff date,
- ? the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount, and
- ? the payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person, or that person's authorized agent, to request an updated payoff amount at no charge and to obtain that updated payoff amount during the creditor's normal business hours on the payoff date or the immediately preceding business day.

A secured creditor must provide, upon request, one payoff statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars for each additional request during that six-month period, except that no fee may be charged for an updated payoff amount.

## **TEXAS**

### **A.**

Effective **September 4, 2005**, Texas House Bill 1833 requires a person making an offer that a recipient can accept by endorsing and negotiating a check, to include a disclosure on the check. The disclosure must be in uppercase 12-point boldfaced type next to the place for endorsement and consist of the following statement: "By signing and negotiating this document, you agree to pay for future services arising out of this contract."

### **B.**

Effective **May 13, 2005**, Texas Senate Bill 461 requires a notice of confidentiality rights to be included on deeds and deeds of trust containing an individual's social security number or driver's license number.

The notice must appear at the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters and read substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

The county clerk may not reject any instrument that does not contain this confidential information.

## WISCONSIN

Effective immediately, the Wisconsin Department of Financial Institutions has adopted substantial new rules governing mortgage lending. They are lengthy regulations and deal with such issues as requiring written examinations for loan originators and continuing education, the content of mortgage broker agreements, and loan solicitor activities.

Specifically, as of July 1, 2005, new loan originator applicants must have passed a written examination before submitting the loan originator application. Applications that do not include proof of passage of the examination will be returned. Test centers may be located by contacting Promissor Corporation. ([www.promissor.com](http://www.promissor.com))

Current loan originators are not required to take the examination. However, beginning with licenses that expire on or after July 1, 2007, a loan originator must have either met certain continuing education requirements or taken a test in lieu of meeting the continuing education requirements to renew their license. Continuing education must consist of at least 16 hours during the two years preceding an application for renewal. At least 2 of the hours must be devoted to new developments in the law, procedure and practice.

Effective July 1, 2005, every contract between a mortgage broker and a consumer under which the mortgage broker agrees to provide brokerage services to the consumer must be in writing and on a form prescribed by the Wisconsin Department of Financial Institutions. Also, effective **July 1, 2005**, a consumer disclosure statement, as promulgated by the Department, must be given to the consumer. Both forms are available on the Department website.

The rules additionally prohibit loan solicitors from accepting any funds from borrowers.

The rules are available in detail at: <http://www.wdfi.org>

## LEGISLATION EFFECTIVE DATES

State	Statute	1st Advised	Effective	Statute Type
Louisiana	HB 466	August 32, 2005	August 15, 2005	Mortgage Lender Examinations
New Hampshire	SB 223	August 31, 2005	July 1, 2005 November 9, 2005	Mortgage Brokers/Bankers Certificates of Discharge
New York	SB 48	August 31, 2005	May 28, 2005	Payoff Statements
Tennessee	SB 1082	August 31, 2005	July 9, 2004	Junk Faxes
Texas	109 S. 714	August 31, 2005		

Texas  
Texas

SB 461  
HB 1833

August 31, 2005    May 13, 2005  
August 31, 2005    Sept 4, 2005

Confidentiality Rights  
Check Disclosures

**Our monthly Lenders Update is published via e-mail as a complimentary service to our subscribers and clients in the financial industry throughout California and the United States. Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at [www.altandassociates.com](http://www.altandassociates.com)**

**Only those persons who have requested this newsletter are on our mailing list. Should you have colleagues who wish to receive this complimentary service, please have them e-mail us at [susan.graaff@altandassociates.com](mailto:susan.graaff@altandassociates.com)**

**ALT & ASSOCIATES provides regulatory, compliance and licensing services, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.**

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