

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

ALT & ASSOCIATES

Tel: (949) 756-5250

Attorneys at Law

Fax: (949) 756-5270

e-mail:

18010 Skypark Circle, Suite 200

david.j.alt@altandassociates.com

Irvine, California 92614

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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. 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 February 15, 2005

NATIONAL ISSUES

MERS WINS LAWSUIT IN NEW YORK

While not terribly significant to the operations of most lenders, the results of a recent Supreme Court of New York, Appellate Division case are interesting. A unanimous decision of 4 – 0 requires County Clerk’s to record all mortgages, assignments, and discharges naming MERS as a the mortgagee or as a nominee for a lending institution. In the matter of MERSCORP, Inc. v. Edward P. Romaine, 2005 NY Slip OP 09728., the court found that a County Clerk has no authority to refuse to record MERS instruments. It went on to say that a Clerk’s functions are ministerial in nature to determine if a recording meets the requirements of law, i.e., such things as due acknowledgement.

The decision resulted from litigation which occurred over a period of four years. It began when the Suffolk County Clerk announced that, as of May 1, 2001, that office would no longer accept MERS instruments that listed MERS as the mortgagee or nominee of record. MERS reports that there are no other counties nationwide which have adopted a similar position.

STATE ISSUES

CALIFORNIA – COURT AGAIN CONTINUES HEARINGS ON UNWANTED FAXES.

As we reported in our previous issue in January, the court, in the case of Chamber or Commerce v. Lockyer, E.D. Cal., issued a provisional stay of California’s advertising fax ban pending a hearing on January 23, 2006. The U.S. Chamber of Commerce has argued that Congress pre-

empted California law with its own version of fax regulations. The Court again continued the matter and set a February 27, 2006 hearing date. No substantive issues were decided.

MARYLAND – MONTGOMERY COUNTY’S PREDATORY LENDING ORDINANCE.

On **March 8, 2006**, an ordinance enacted in Montgomery County, Maryland, will take effect. The ordinance is identified as Bill No: 36-04.

The Act identifies specific practices related to lending activities that constitute discriminatory housing practices, including;

- making a loan without tangible net benefit,
- abusive prepayment penalties,
- financing excess points and fees,
- steering borrowers to more expensive properties or loan programs, and
- financing single premium credit insurance.

The new 36-04 prohibits people from engaging in these types of discriminatory lending practices. It provides for damages for humiliation and embarrassment for these types of acts of discrimination. The bill also provides that the county’s executive counsel provide an annual report on discriminatory lending practices and educate the public about these types of lending practices. Consumers will be able to file complaints based on discriminatory, predatory or abusive lending practices.

NEW JERSEY – NO PERSONAL PROPERTY FOR FIRST LIEN LOANS.

NJAC 3:15-10.4 is a new regulation effective **January 17, 2006**. The new regulation will prohibit first mortgage lenders from requiring or accepting as collateral or security, for a first mortgage loan, a borrower’s household or personal goods such as furniture, electronic equipment, motor vehicles, appliances and jewelry.

WASHINGTON – NEW CONSUMER LOAN ACT REGULATIONS

On **February 27, 2006**, Washington’s new regulations concerning the Consumer Loan Act and its licensees will become effective. These rules are by and large explanatory and procedural. However, they should be reviewed in detail if a lender is operating under the Consumer Loan Act.

There are two significant changes in the new regulations.

- Bonds for Consumer Loan licensees making real estate secured loans have been increased. The new minimum bond amount will be \$400,000 for the first licensed location and an additional \$100,000 for the each branch or office up to five (5) licensed locations. For each additional branch office over five, the amount of the bond must be increased by \$10,000.
- A location that is solely providing underwriting and other back office services on Washington loans and has only incidental contact with the borrower, is not required to be licensed as a branch. However, this limited exception does not change the requirement that all locations where a person conducts business must be licensed. This includes locations that offer loans by mail or by internet.

LEGISLATION EFFECTIVE DATES

	Statute	1st Advised	Effective	Statute Type
Maryland	Bill 36-04	February 28, 2006	March 8, 2006	Lending Practices

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

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

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. If you have any questions please contact:

David J. Alt, Esq.

David.j.alt@altandassociates.com