

# 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 June 15, 2005*

## FEDERAL ISSUES

### NEW REAL ESTATE STANDARDS

The federal Joint Financial Agencies, which include the OCC, FDIC, NCUA, OTS and Federal Reserve, have issued a new policy giving their supervised institutions guidelines for credit risk management and home equity lending. The guides were issued on **May 16, 2005**.

Among the factors cited as risks, were;

- greater use of automated valuation models,
- transactions generated through third parties/brokers,
- credit to lower end credit risk scores,
- high HLV/DI ratios,
- "low doc" or "no doc" programs, and
- no amortization loans.

We would think that this would significantly reduce these institutions' participation in the mortgage lending market.

## STATE ISSUES

### ALABAMA

Section 5-19-4(g) of the Alabama Consumer Finance Act places a 5% limitation on seller paid fees to a mortgage broker. Alabama's Banking Department has now taken the position that the 5% limitation includes all broker or lender fees whether paid by the seller or the buyer. The reasoning behind this policy may be a bit stretched. The Department finds that nothing in the law specifically provides that seller-paid fees should be included in the 5% limitation, one way

or another, therefore it has concluded on its own that seller-paid fees should be included in the limitation.

## **GEORGIA**

Georgia Senate Bill 100 was signed into law on **May 5, 2005** and became effective that same day. The new statute specifically prohibits residential mortgage fraud. A person commits the offense of residential mortgage fraud when, with the intent to defraud, such person does any of the following:

- Knowingly makes any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by any party to the mortgage lending process;
- Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by any party to the mortgage lending process;
- Receives any funds in connection with a residential mortgage closing that such person knew resulted from knowingly making or using any deliberate misstatement, misrepresentation, or omission during the mortgage lending process.
- Files or causes to be filed with the official registrar of deeds of any county of this state any document such person knows to contain a deliberate misstatement, misrepresentation, or omission.

“Mortgage lending process” means the process through which a person seeks or obtains a residential mortgage loan including solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

## **IOWA**

Effective **July 1, 2006**, Iowa House Bill 737 will require registration of individual mortgage bankers and mortgage brokers.

### Definitions

The Act defines ‘mortgage banker’ as a person who, in a calendar year, makes or services at least four first mortgage loans on residential real property located in Iowa, or in a calendar year, originates at least four first mortgage loans on residential real property located in Iowa and sells four or more such loans in the secondary market.

The Act defines ‘mortgage broker’ as a person who, in a calendar year, arranges or negotiates, or attempts to arrange or negotiate, at least four first mortgage loans or commitments for four or more such loans on residential real property located in Iowa.

The definitions of ‘Mortgage Banker’ and ‘Mortgage Broker’ do not include a person whose job responsibilities on behalf of a licensee or individual registrant are (i) to process mortgage loans, (ii) are solely clerical in nature, or (iii) otherwise do not involve direct contact with loan applicants.

### Exemptions

The Act exempts the following:

- Mortgage lenders or mortgage bankers maintaining an office in Iowa whose principal business in Iowa is conducted with or through mortgage lenders or mortgage bankers otherwise exempt and which maintain a place of business in Iowa.
- An individual who is employed by a person otherwise exempt, or who is under an exclusive contract with a person otherwise exempt to the extent that the individual is acting within the scope of the individual's employment or exclusive contract with the exempt person and is acting within the scope of the exempt person's charter, license, authority, approval, or certificate.

### Registration Requirements

All individual (persons) mortgage bankers and mortgage brokers employed by, or under contract with a licensee are required to register annually. The Act provides a limited number of exemptions which exempt banks, certain insurance producers, individuals employed by exempt entities, and licensed real estate brokers from the registration requirements. The requirements will include a criminal background check. Individual registration expires annually on June 30.

Continuing education is also required for registrants. All individual registrants must complete twelve hours of continuing education or training each year. An annual deadline for the completion of such continuing education or training will be established.

### License / Surety Bond Requirements

A license applicant is not eligible for licensing until all individual registrants have successfully completed the registration requirements.

Surety bond requirements for license applicants are increased by the Act. Mortgage broker applicant surety bonds have been increased from \$15,000 to \$25,000, and mortgage banker applicant surety bonds have been increased from \$30,000 to \$50,000.

## **MAINE**

### **HB 883**

Maine House Bill 883 was signed into law on **May 24, 2005**. The statute requires supervised lenders to disclose to a mortgage loan applicant that if the mortgage loan includes private mortgage insurance or credit services origination. The disclosure must be made at the time of application. These companies must also disclose if a company processing the mortgage loan application also engages in the business of private mortgage insurance.

### **HB 900**

Maine House Bill 900 was signed into law on **May 20, 2005**. The statute requires registration of all loan officers employed or retained by a supervised lender. A 'loan officer' is an individual who is employed or retained and supervised by a licensed supervised lender, whose primary job responsibilities include direct contact with mortgage applicants and who accepts applications for and originates, negotiates, solicits, arranges for or obtains mortgage loans. The statute's definition of 'loan officer' exempts clerical staff and loan processors.

Licensees and license applicants must apply for registration of all loan officers employed or retained on an on-going basis. All loan officers must meet standards for financial responsibility, character and fitness. If such standards are not met, loan officer registration and license

application/renewal may be denied. A loan officer must be registered at the loan officer's principal licensed work location and may then work from any licensed location of the supervised lender.

### **HB 980**

Maine House Bill 980 was signed into law on **May 20, 2005**. The statute establishes standards for creditors making payments from escrow and answering payoff figure requests. Creditors are required to make timely payments from escrow and assume liability for actual damages if timely payments are not made. Creditors are further required to rectify the results of a failure to make timely payments, including causing corrections to the consumer's credit report and causing the discharge of any liens against the consumer's real estate.

A creditor must respond to a request for a payoff figure within three business days following receipt of such a request. The response must include a precise payoff figure as of a certain date and must contain information permitting the consumer to update that figure, such as by providing a per diem rate. A charge may not be assessed for the first two payoff figure requests in a calendar year. A charge for each subsequent request may not exceed \$5.00.

### **SB 222**

Maine Senate Bill 222 was signed into law on **June 2, 2005**. The Act changes the name of 'credit service organizations' to 'loan brokers', changes the state license process, increases surety bond requirements, regulates print advertising by loan brokers, and requires continuing education.

#### Name Change

The previous definition and exemptions from the designation of credit service organizations will apply to loan brokers, as well as previous regulations.

#### Licensing

Loan brokers must apply for a license on or before January 31<sup>st</sup> of each even-numbered year. The initial application must include a fee of \$400 (increased from \$200). The biennial relicensing application must include a fee of \$200 (increased from \$100).

#### Surety Bond

The required amount for a surety bond has been increased from \$10,000 to \$25,000.

#### Advertising

A loan broker must include its license number in all print advertising in Maine.

#### Continuing Education

Continuing education requirements will be prescribed by rule for applicants, partners, officers or directors, and employees of applicants. The reasonable costs of meeting such educational requirements are assessed to applicants.

### **MARYLAND**

Maryland has enacted legislation, effective **October 1, 2005**, which regulates licensing of mortgage originators. Beginning on **January 1, 2007**, an individual may not act as a mortgage

originator unless the individual is a licensee or exempt from licensing. The Act outlines license application and renewal procedures, fees, and applicant qualifications.

### Qualifications

To qualify for a license an applicant must have at least three years of experience in the mortgage lending business and have completed continuing education courses, or have successfully completed forty hours of classroom education. The applicant must also be of good moral character and able to prove general fitness.

A licensee may not maintain more than one license or be employed by more than one mortgage lender. An individual may not act as a mortgage originator under a name, or for an employer that is different from the name and employer, that appear on the license.

A license may be issued to an individual who is employed by a mortgage lender that has its principal office located outside of the state if the mortgage lender maintains a resident agent within the state and an office within the state and staffed by at least one employee authorized to originate mortgage loans.

### Application and Renewal Procedures and Fees

To apply for a license, an applicant must complete an application form. Applicants must also submit a written statement by the applicant's employer that the applicant has been approved for employment as a mortgage originator. With each application, the applicant must pay a nonrefundable investigation fee of \$100, and a license fee of \$300.

A license issued on or after October 1, 2006, expires on December 31 in each odd-numbered year after December 31, 2006, unless renewed. On or before December 1 of the year of expiration a license may be renewed by submitting a renewal application and paying a renewal fee of \$300. Satisfactory evidence of compliance with continuing education requirements must also be submitted when applying for renewal.

## **MONTANA SB 274**

Montana Senate Bill 274 was signed into law on **April 20, 2005**. The statute revises the Montana Mortgage Broker and Loan Originator Licensing Act by revoking a licensing exemption for mortgage bankers acting as mortgage brokers. A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families, is acting as a mortgage broker and must be licensed as a mortgage broker.

Certain experience requirements must be met in order to be eligible for a license. An individual applying for a license as a mortgage broker must have a minimum of three years of experience working as a loan originator, as a mortgage banker, or in a related field. An individual applying for a license as a loan originator must have a minimum of six months of experience working in a related field. The definition of 'work in a related field' will be established by rule.

## **MT 732**

Montana has enacted legislation, to take effect **March 1, 2006**, requiring all businesses to destroy outdated customer records and notify customers upon discovery of a computer security breach. A business must take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business.

Any person or business that owns or licenses computerized data that includes personal information must disclose any breach of the security of the data system to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay.

### **NEW HAMPSHIRE**

Effective **May 31, 2005**, and also affecting certain conveyances that have occurred prior to the effective date, New Hampshire House Bill 348 clarifies legislative intent regarding power of attorney documents. Certain requirements on durable powers of attorney is focused on powers of attorney which are general in nature, and therefore more vulnerable to possible misuse.

The acknowledgment and disclosure which must currently be affixed to a durable power of attorney are limited in that they are only required on durable general powers of attorney. Powers of attorney that are by their terms limited to a specified transaction or series of transactions are not subject to these requirements.

Failure to comply with the acknowledgment and disclosure requirements will not invalidate an otherwise durable general power of attorney. Failure to comply with the acknowledgment and disclosure requirements will not affect a specifically limited power of attorney in any way.

If a challenged durable general power of attorney is accompanied by the acknowledgment and disclosure, it will be presumed lawful.

### **OREGON**

Oregon House Bill 2637 was signed into law on **May 25, 2005**. The new statute prohibits a mortgage broker or mortgage banker from transacting business by means of an untrue statement or omission. A mortgage broker or mortgage banker taking such action will be liable for damages in an amount equal to the ascertainable loss. An action for a violation may be commenced within three years after the transaction or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later, but in no event more than five years after the date of the transaction.

### **TENNESSEE**

Tennessee Senate Bill 1082 was enacted on **May 28, 2005** and became effective immediately. The new statute provides for restrictions and limitations on its provision of payoff statements. A person requesting a payoff statement, such as a landowner or person liable for performance under an obligation secured by real property, may provide to a creditor a notification requesting a payoff statement for a specified payoff date, not more than 30 days after the notification is given. The new statute provides for certain information to be contained in the modification such as name, directions as to where to send the statement and so on. Within ten days after the

effective date of a notification, the secured creditor shall issue a payoff demand and send it to the requesting party. It may be sent by depositing in the mail, with a commercially reasonable delivery service, facsimile transmission or electronic mail (if the requesting party has agreed to it).

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 the update payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day.

A creditor must provide one payoff statement free during any six month period. A secured creditor may charge a fee of \$25.00 for each additional request.

### **VERMONT**

Effective **June 1, 2005**, Vermont Senate Bill 62 updates application fee procedures. The Act specifies that the license fee for an application submitted after September 30 of any year will be prorated.

The Act also provides for increased surety bond amounts. The surety bond requirement for a lender's license applicant has been raised from \$25,000 to \$50,000. The surety bond requirement for a mortgage broker's license applicant has been raised from \$10,000 to \$25,000.

## **LEGISLATION EFFECTIVE DATES**

<b>State</b>	<b>Statute</b>	<b>1st Advised</b>	<b>Effective</b>	<b>Statute Type</b>
Georgia	SB 100	June 30, 2005	May 5, 2005	Residential Mortgage Fraud
Iowa	HB 737	June 30, 2005	July 1, 2006	Registration
Maine	HB 883	June 30, 2005	May 24, 2005	Disclosures
Maine	HB 900	June 30, 2005	May 20, 2005	Registration of Loan Officers
Maine	HB 980	June 30, 2005	May 20, 2005	Payoff requests
Maine	SB	June 30, 2005	June 2, 2005	Various changes
Maryland	HB 1040	June 30, 2005	October 1, 2005	Mortgage Originator Licensing
Montana	SB 274	June 30, 2005	April 20, 2005	Licensing exemptions
Montana	HB 732	June 30, 2005	March 1, 2006	Customer records
New Hampshire	HB 348	June 30, 2005	May 31, 2005	Power of Attorney
Oregon	HB 2637	June 30, 2005	May 25, 2005	Statements and Omissions
Tennessee	SB 1085	June 30, 2005	May 28, 2005	Payoff statements
Vermont	SB 62	June 30, 2005	June 1, 2005	Application Fees

## **PREDATORY LENDING ISSUES**

Nothing of significance to report

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**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)**

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