

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 May 17, 2005

STATE ISSUES

ARIZONA

Arizona Senate Bill 1447 became law on **April 18, 2005**. The statute provides that a person shall not, by means of a web page or electronic mail message, solicit, request or take any action to induce another person to provide identifying information by representing that the person is an existing on-line business without the authority or approval of the actual on-line business.

A violation of this provision, allows the person harmed to recover treble damages. A violation is also a felony.

ARKANSAS

On **April 5, 2005**, House Bill 2658 was signed by the Governor of Arkansas and became effective that date. The statute amends the Arkansas Fair Mortgage Lending Act.

Changes to the Arkansas Mortgage Bankers and Brokers Branch Licensing Requirements were made to enlarge the definition of a branch such that:

- A branch office now includes any address of a lender which appears on business cards, stationery, or advertising in connection with business conducted by a licensee, or
- at which the licensee's name, advertising, promotional materials or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded or serviced, or
- which, due to the actions of any employee, or loan officer is construed by the public as a branch office of the licensee.

The definition of a loan officer, which requires a license in Arkansas, is an employee of a mortgage broker or a mortgage banker, who:

- solicits or offers to solicit an application for a mortgage loan,
- accepts or offers to accept an application for a mortgage loan,
- negotiates or offers to negotiate the terms or conditions of a mortgage loan, or
- issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement.

With the changes to the Act, an applicant filing for new licensing or renewals as a mortgage banker, mortgage broker, or mortgage servicer, must:

- provide audited financial statements which reflect a net worth of \$25,000,
- which are prepared by a CPA in accordance with GAAP, and
- contain an unqualified opinion acceptable to the commissioner.

Each branch of a mortgage broker, mortgage banker or servicer, must have a branch manager in charge of the branch and responsible for its operations. The manager must be licensed as a loan officer.

However, the requirement of 3 years mortgage related experience for branch managers and their onsite physical presence at the branch, have been deleted.

COLORADO

House Bill 1059 became law in Colorado on **May 4, 2005**. The new law changes specific exemptions from the prohibition against sending unsolicited facsimiles. It is now permissible in Colorado to send a facsimile to a person who has an existing business relationship with the sender. "Business relationship" for purposes of this law means a relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber, with or without an exchange of consideration on the basis of an inquiry, application, purchase, membership or transaction by the residential or business subscriber regarding products or services offered by such person or entity.

GEORGIA

On **April 9, 2005**, Senate Bill 62 was signed by the Governor of Georgia. With this legislation, Georgia joins the ranks of those states regulating electronic mail.

The statute is aimed at electronic messages which engage in a variety of fraudulent and deceptive practices to hide the identity of their senders, to disguise the true source of the e-mail, or to evade the criminal and civil consequences of their actions. The statute provides that a person who initiates a commercial e-mail which the person knew, or should have known, to be false or misleading, shall be guilty of a crime of initiation of a deceptive commercial e-mail. Depending on the number of recipients of the false message, the crime is either a misdemeanor or felony.

IDAHO

House Bill 72 was signed into law on **April 5, 2005**. The law amends current Idaho law relating to its Residential Mortgage Practices Act and the exemptions from loan originator licensing requirements found therein.

Loan agents who act under an exclusive contract with no more than one licensee on a full-time or part-time basis are no longer exempted from Licensing. They are now subject to the requirement that all loan originators must be individually licensed.

IOWA

House Bill 737 became law on **April 29, 2005**. The new statute relates to the definition of mortgage bankers and brokers and the exemptions from related licensing requirements.

A mortgage banker or broker no longer includes a person whose job responsibilities on behalf of the licensee or registrant are solely to process mortgage loans, or who otherwise do not have direct contact with loan applicants.

In modified language, Iowa now exempts from licensing requirements for mortgage bankers and brokers not only national banks, but banks, bank holding companies, savings banks, savings and loan associations, or credit unions organized under the law of Iowa or another state or the United States, or an affiliate or subsidiary of such an entity.

The Act becomes effective **July 1, 2006**.

KANSAS

House Bill 2125 was signed into law on **April 4, 2005** and becomes effective upon publication in the statute books of Kansas.

The statute provides that a fee required to enter a Satisfaction of a Mortgage, may be collected from the Mortgagor. However the failure of the mortgagor to pay such a fee shall not relieve the mortgagee or the mortgagee's assignee from entering satisfaction of such mortgage in a timely manner in compliance with the requirement of Kansas law.

Further, Kansas House Bill 2205 became law on **April 5, 2005**. It becomes effective on the date of its publication in the statute books of Kansas.

The statute provides that no person may include the name, trade name or trademark of a lender or a name, tradename or trademark similar to that of a lender, in a solicitation for products or services without the consent of the lender unless the solicitation clearly and conspicuously states in boldface type on the front page of the correspondence that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender. The statement shall include the name, address and telephone number of the person making the solicitation and provide further that any loan information referenced was not provided by the lender.

No person may include a loan number, loan amount, or other specific loan information that is not publicly available in a solicitation. Finally, no person may make reference to a loan number, loan amount or other specific loan information on the outside of an envelope, or which can be seen through the envelope window, or on a postcard, in connection with any communication that includes or contains a solicitation for services offered by the other lender.

MARYLAND

Maryland's Governor signed Senate Bill 159 on **April 26, 2005**. The statute becomes effective on **October 1, 2005**.

Maryland had provided an exemption from licensure by the Commissioner of Financial Regulation for Mortgage Lenders that are federally approved sell-servicers. This statute removes that exemption.

NEW MEXICO

Senate Bill 652 became law on **April 6, 2005**. Its terms become effective **January 1, 2006**. The statute adds wet funding requirements under the Mortgage Loan Company and Loan Broker Act.

A closing agent for any purchase of real property shall not require or permit any party to execute documentation necessary to execute documentation necessary to finalize that transaction unless the consideration necessary to complete that transaction has been previously delivered to the seller or to the closing agent.

Further, unless the consideration necessary to complete a purchase of real property has been previously delivered to the seller or to the closing agent, a lender shall comply with the following:

- funds in an amount sufficient to complete the purchase of real property shall be provided to the closing agent at the same time the lender provides to the closing agent the documentation to be reviewed and executed by the parties to the real estate transaction; and
- within two business days from the time the lender receives copies of all required documentation to the real estate transaction, including documentation executed by the parties to that transaction, the lender shall:
 - authorize the closing agent to record with the county clerk all documents necessary to complete the real estate transaction and release the proceeds of the real estate transaction in accordance with agreed upon escrow instruction,
 - advise the closing agent of any funding conditions, as set forth in the lender's escrow instruction, that have not been satisfied and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow; or
 - advise the closing agent that the documentation for the real estate transaction does not satisfy the lender's escrow instruction, specify the manner in which that documentation does not satisfy that instruction and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow.

OKLAHOMA:

Oklahoma House Bill 1581 became law on May 2, 2005. The Act will become effective on **July 1, 2005**. It provides that a mortgage banker is exempt from licensing and other requirements of the Mortgage Broker Licensure Act. For purposes of this exemption, a "mortgage banker" is defined as a person who (i) accepts an application for a loan, or makes a mortgage loan and (ii) is an approved or authorized lender of HUD with DE authority, or (iii) closes mortgage loans in its corporate name as the originating mortgagee and funds a minimum of eighty percent (80%) of the

total annual numeric volume of mortgage loans it originates for sale in the secondary mortgage market with its own corporate funds, or (iv) is approved as a seller or servicer by Fannie Mae, Freddie Mack or Genni Mae.

TENNESSEE

Senate Bill 719 was signed by the Governor of Tennessee on **March 29, 2005** and became effective immediately. It provides that the duration of Deeds of Trust for open-end lines of credit can be extended from 20 years to 30 years.

LEGISLATION EFFECTIVE DATES

| State | Statute | 1st Advised | Effective | Statute Type |
|------------|---------|--------------|-----------------|------------------------------------|
| Arizona | SB 1447 | May 31, 2005 | April 18, 2005 | E-mail Solicitation |
| Arkansas | HB 2658 | May 31, 2005 | April 5, 2005 | Fair Mortgage Lending Act |
| Georgia | SB 62 | May 31, 2005 | April 9, 2005 | Electronic Mail |
| Colorado | HB 1059 | May 31, 2005 | May 4, 2005 | Unsolicited Facsimiles |
| Idaho | HB 72 | May 31, 2005 | April 5, 2005 | Residential Mortgage Practices Act |
| Iowa | HB 737 | May 31, 2005 | July 1, 2005 | Licensing Requirements |
| Kansas | HB2125 | May 31, 2005 | April 4, 2005 | Fees |
| Kansas | HB 2205 | May 31, 2005 | April 5, 2005 | Name, Tradenames, Trademarks |
| Maryland | SB 159 | May 31, 2005 | April 26, 2005 | Licensure Exemptions |
| New Mexico | SB 652 | May 31, 2005 | January 1, 2006 | Wet Funding Requirements |
| Oklahoma | HB 1581 | May 31, 2005 | July 1, 2005 | Mortgage Bankers Exemption |
| Tennessee | SB 719 | May 31, 2005 | March 29, 2005 | Deeds of Trust |

FEDERAL ISSUES

Nothing of significance to report

PREDATORY LENDING ISSUES

Nothing of significance to report

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 serviced, 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:

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