

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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Issue

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 October 15, 2005

FEDERAL ISSUES

RESPA SETTLEMENTS

In late August 2005, HUD entered into two settlement agreements for violations of Section 8(a) of RESPA one with Prudential Locations, LLC and one with Coldwell Banker Residential Real Estate, Inc. The two settlements were unconnected.

Both settlements stemmed from HUD investigations regarding Section 8(a)'s prohibition "on the giving or receiving of any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person." 12 U.S.C. §2607(a).

HUD's investigation of Prudential determined that Prudential violated RESPA by:

- ? Organizing and promoting a party open only to real estate agents who referred over one million dollars worth of business.
- ? Paying for and giving a three-year lease on a car for a real estate agent that won a drawing at a party.
- ? Paying for and giving real estate agents trips in return for their referrals.
- ? Paying for and giving real estate agents restaurant gift certificates in return for their referrals.

HUD's investigation of Coldwell Banker determined that Coldwell Banker violated RESPA by:

- ? Giving higher sales commission splits to agents who referred business to an affiliated company called Regency Title.
- ? Requiring agents to refer business to Regency Title in order to receive referrals of relocation business.
- ? Allowing only those agents who referred business to Regency Title to be paid their commission at settlement.
- ? Giving prizes and other benefits to those agents who referred business to Regency Title.

As we have mentioned before, HUD is actively enforcing Section 8 and these are very recent examples of HUD's efforts.

STATE ISSUES

CALIFORNIA

AB 901

California Assembly Bill 901 revises the term "covered loan" to mean a consumer loan in which the original principal balance does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association. The Act does not change any other provision of the California 'covered loan' law. The Act is effective **January 1, 2006**.

SB 97

California Senate Bill 97 was signed into law on **September 22, 2005**. The Act establishes restrictions on commercial email advertisements.

The Act prohibits any person or entity from advertising in a commercial email advertisement sent either from or to a California electronic mail address under any of the following circumstances:

- ? The email advertisement contains or is accompanied by a third-party's domain name without the permission of the third party.
- ? The email advertisement contains or is accompanied by falsified, misrepresented, or forged header information.
- ? The email advertisement has a subject line that a person knows would be likely to mislead a recipient about a material fact regarding the contents or subject matter of the message.

Violation of the new law could result in criminal prosecution as well as civil penalties.

MICHIGAN

Michigan Senate Bill 540 adds an exemption from licensing as a mortgage broker or mortgage lender. The Act became effective **September 21, 2005**. The Act provides an exemption from licensing requirements if an individual is an employee of a professional employer organization, and is acting as a residential mortgage originator performing services for a licensee. The mortgage broker or mortgage lender must do all of the following:

- ? Direct and control the activities of the individual.
- ? Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit.

The Act defines “professional employer organization” as an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

- ? Maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity.
- ? Paying wages and employment taxes of the employees out of its own accounts.
- ? Reporting, collecting, and depositing state and federal employment taxes for the employees.
- ? Retaining the right to hire and fire employees.

NEW YORK

New York Assembly Bill 7710 became effective **September 12, 2005**. The Act updates the definition of “unsolicited telemarketing sales call” by prohibiting unsolicited telemarketing sales calls to a consumer with whom the business has an established business relationship if the consumer has requested not to be called by the telemarketer. The Act also removes the face to face exception from the definition. The face to face exception previously allowed unsolicited telemarketing sales calls if made following a face to face sales presentation.

NORTH CAROLINA

The North Carolina Commissioner of Banks issued Declaratory Ruling 2005-1 on **March 11, 2005**. The Ruling clarifies that lenders licensed under the Mortgage Lending Act may make reverse mortgage loans if the lender meets the standards for approval under the Reverse Mortgage Act.

The Ruling also states that mortgage brokers may not make reverse mortgage loans, nor may they broker reverse mortgages. No fee may be paid for any referral or contact. Any brokered reverse mortgage loans prior to the date of the ruling will not be subject to rescission. However, such activities must cease immediately. Unauthorized brokerage or making of reverse mortgages is cause for license revocation and other enforcement action.

LEGISLATION EFFECTIVE DATES

State	Statute	1st Advised	Effective	Statute Type
California	AB 901	Oct 31, 2005	January 1, 2006	Covered Loans
California	SB 97	Oct 31, 2005	Sept 22, 2005	Commercial e-mail advertisements
Michigan	SB 540	Oct 31, 2005	Sept 21, 2005	Licensing exemptions
New York	AB 7710	Oct 31, 2005	Sept 12, 2005	Telemarketing Sales Calls
North Carolina	Rule 005	Oct 31, 2005	March 11, 2005	Reverse Mortgage Loans

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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