

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## 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](mailto: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, cases or website can be easily identified in the summary. Our Update includes information available to Alt & Associates by April 21, 2007

## FEDERAL ISSUES

### **SUPREME COURT SUPPORTS NATIONAL BANKS ON PREEMPTION ISSUE**

As we all know, national banks, under federal law, have always maintained a special position relative to their operations in the various states. This issue has been litigated on numerous occasions. By and large, the banks’ position has been supported. Does federal law and that law establishing and regulating national banks pre-empt state laws? This question has once again become particularly significant in the increasingly complex regulatory climate as it concerns mortgage lending.

On **April 17, 2007**, in the case of Watters, Commissioner, Michigan Office of Insurance and Financial Services v. Wachovia Bank, N.A., et al. (No. 05-1342), the Supreme Court in a 5–3 opinion against Watters again generally concluded that federal law concerning national banks pre-empts state law. Wachovia Bank is an OCC Chartered National Banking Association. It conducts its real estate lending business through Wachovia Mortgage Corporation, which is a wholly owned, North Carolina chartered entity. It is licensed as an operating subsidiary by OCC, through which it does business in the state of Michigan and elsewhere.

Michigan law, as in many states, specifically exempts national banks from its mortgage lending regulation. However, it requires subsidiaries to register with the state and submit to the supervision of the regulators of that state. The Commissioner of the Office of Insurance and Financial Services notified Wachovia Mortgage it could not engage in mortgage lending without fulfilling these requirements. Wachovia brought an action for declaratory relief, arguing that the federal statutes and OCC regulations pre-empt these Michigan mortgage lending laws. The

federal District Court decided for Wachovia and the Sixth Circuit Court of Appeal sustained this decision. When appealed to the Supreme Court, the Court found that Wachovia's mortgage business, whether conducted by the Bank itself or through the Bank's operating subsidiary is subject to the OCC's supervision. It is not subject to licensing, reporting, and visitorial regimes of the states in which it operates.

The decision is available online on many sites. Perhaps the simplest and available without cost is: <http://www.law.cornell.edu/supct/html/05-1342.ZS.html>

### **LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS**

On April 11, 2007, the Department of Defense issued proposed rules providing for limitations on terms of consumer credit extended to service members and dependents. Notice of the proposed rulemaking and request for comment can be found at Federal Register Vo. 72, No. 069. It should be pointed out that these proposed rules do not affect any loan-purchase transactions, refinancing, home equity loans or reverse mortgages secured by an interest in the borrower's dwelling. However, to those of you who are interested beyond this, they do apply to such lending programs as: 1) payday loans, 2) rent-to-own programs, 3) vehicle title loans, 4) refund anticipation loans, and 5) military installment loans. The proposed rules directly address predatory lending issues which the DOD believes are significant problems with this type of lending. These include: 1) abusive collection actions, 2) balloon payments with unrealistic payment terms, 3) equity stripping, and 4) excessive interest rates. We suggest anyone dealing with these issues carefully review these proposed rules.

## **STATE ISSUES**

### **KENTUCKY**

On **April 5, 2007**, the Governor of Kentucky signed into law H.B. 430. The law relates to consumer telemarketing and replaces the state maintained Zero Call list with the national Do Not Call Registry.

### **ILLINOIS**

As we have reported, and most of us know, the effects of H.B. 4050 in Illinois were suspended a few months ago. The Illinois regulators have proposed new rules pertaining to this Illinois Predatory Lending Database Pilot Program. The Rules have a 45 day comment period during which any interested groups or individuals may file comments. The cutoff date for comments is **May 21, 2007**. Comments may be directed to: Craig Cellini, Rule Administrator, Illinois Department of Financial and Professional Regulation, 320 W. Washington, Springfield IL, 62786. These proposed rules can be found on the home page of the Illinois Department of Financial and Professional Regulation at: <http://www.idfpr.com/>

## **PREDATORY LENDING**

By accident, we came across a summary of predatory lending introduced around the country in 2007. This summary can be found at the National Conference of State Legislatures website at:

[http://www.ncsl.org/programs/banking/PredLend\\_2007Pending.htm](http://www.ncsl.org/programs/banking/PredLend_2007Pending.htm) You might enjoy taking a look.

**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**

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**[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. If you have any questions please contact:**

**David J. Alt, Esq.**

**[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)**