

# 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. 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 22, 2008.

## STATE ISSUES

### CALIFORNIA

#### **New Rules Concerning Nontraditional Mortgage Products and Adjustable Rate Loans.**

A few months back, the California Department of Corporations issued new rules requiring residential mortgage lenders and finance lenders to implement best practices for nontraditional mortgage lending. The existence and substance of these rules seems to have slipped under many people’s radars. We thought it might be best to bring them back to your attention. They are available on the California Department of Corporation’s website at <http://www.corp.ca.gov/OLP/pdf/rm/07070.pdf> The new rules incorporate the practices contained in the Statement on Subprime Mortgage Lending Conference of the State Bank’s Supervisors, the American Association of Residential Mortgage Regulators and the National Association of Consumer Credit Administrators.

These new rules require a licensee to submit an annual report on its participation with nontraditional mortgage products and adjustable rate products. If the lender is involved in these programs, it must explain how it has put into effect the internal controls required by the Guidance. In addition, information must be provided in the reports on consumer complaints and their resolution. The rule, which became effective **January 1, 2008**, also contains record keeping requirements and significant prohibitions and requirements for advertising these products.

### GEORGIA

#### **New Financial Institutions Legislation**

In mid-April, the Georgia General Assembly adopted new legislation affecting the mortgage lending industry. Specifically, there are three Bills: House Bill 1093, Senate Bill 355 and Senate Bill 531. As of the cut-off date for this Lenders Update, these laws have not yet been signed by the Governor's office although indications are that Governor Perdue will sign them.

Briefly, the bills cover the following subjects:

- Ø **H.B. 1093:** This amends current Georgia Law relative to lenders who unreasonably withhold cancellation of deeds when loans are paid in full. The result of litigation and class action suits, H.B. 1093 provides clarification to the current law providing that when an instrument is paid in full, the lenders, within sixty (60) days of full payment, must mail notice of satisfaction or cancellation and notice of the borrower's rights to demand payment of \$500 if such obligation is not timely met. A borrower must provide written demand at least fifteen days (15) prior to filing civil action to recover the \$500 damages. The law will become effective upon execution by the Governor.
- Ø **S.B. 355** (Known as the "Good Funds" bill): This bill changes Georgia law to allow certain additional instruments that settlement agents may accept at closing. These include; a cashier's check, a check drawn on the escrow account of an attorney or real estate broker, a check issued by the United States or Georgia or another person's or entity's check not exceeding \$5,000. If you are involved in Georgia as a closing agent, this law should be reviewed in detail. It will become effective upon the Governor's signature.
- Ø **H.B. 531:** This new legislation relates to the advertisement and conduct necessary for validity of a sale made in foreclosures under the power of sale. Again, the bill becomes effective immediately upon the Governor's signature.

Details related to this new legislation can be found at:

[http://dbf.georgia.gov/00/press/detail/0,2668,43414745\\_43418327\\_111601318,00.html](http://dbf.georgia.gov/00/press/detail/0,2668,43414745_43418327_111601318,00.html)

## **MARYLAND**

### **New Emergency Foreclosure Legislation**

On **April 18, 2008**, Governor O'Malley signed into law a series of new proposals relative to emergency legislation aimed at helping Maryland homeowners who are at risk of losing their homes through foreclosure. The emergency legislation, among other items, accomplishes the following:

- Ø The foreclosure process is lengthened from 15 days to approximately 150 days.
- Ø A comprehensive criminal mortgage fraud provision has been added to Maryland law making fraud a crime in any mortgage transaction.
- Ø Foreclosure rescue transactions that scam homeowners are now banned. Provisions for this law are very much like foreclosure consultant and equity purchaser provisions of not only California law, but now other states.

More information can be found at: <http://dllr.state.md.us/whatsnews/mortforeemerleg.htm>

## **MICHIGAN**

### **Required Registration of Michigan Loan Officers**

Governor Granhoim signed legislation on **April 3, 2008** mandating registration of Michigan mortgage loan officers. The law gives the state oversight by mandating background checks and education. A new licensing fee will be put in place and agents will be required to register within ninety (90) days of employment. Registration may be denied based on a list of enumerated grounds. Registration must occur by January 1, 2009. Details concerning this new law may be found at: <http://www.michigan.gov/dleg/0,1607,7-154-10555-189170--00.html>

**WASHINGTON**  
**A Whole New Deal**

New legislation was passed and signed into law in late March in Washington. The new laws significantly change a number of issues concerning the Mortgage Broker’s License and the Consumer Loan License. The laws become effective on **June 12, 2008**. Implementing regulation will be prepared by the Washington Department of Financial Institutions (“DFI”). Copies of the new statutes H.B. 2770 and S.B 6471 can be found on the DFI website at: <http://dfi.wa.gov/cs/loan.htm>

Among the new and significant changes:

- Ø A mortgage broker is now a fiduciary of the borrower. This dramatically changes the law and ramps up the responsibilities of the broker as well as the consequences if the broker breaches its duties.
- Ø Licensed mortgage brokers cannot originate loans under that license. Loans must be originated under a Consumer Loan License and the fee restrictions of the Consumer Loan Act.
- Ø The Fannie Mae and Freddie Mac exemption from licensing is eliminated.
- Ø Brokers must now provide new disclosures to their borrowers.
- Ø Brokers must adhere to the Interagency Guidance on Nontraditional Mortgage Products.

These new changes should be studied very carefully.

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*Please fill out the following short form and e-mail it ([susan.graaff@altandassociates.com](mailto:susan.graaff@altandassociates.com)) or fax it (949-253-5756) to us if you wish to add colleagues to our complimentary subscription list or wish to change your e-mail. We have included a “feed-back” space so that you may send comments or suggested subjects for the newsletter.*

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**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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