LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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The purpose of the Lenders Update is to provide a "heads-up" of new legislation and other issues affecting the mortgage lending industry. We provide summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new statute, regulation or other material in detail where it is relevant to them. For reference, the applicable matter can be easily identified in the summary, and, where possible, a link is provided.

The Update includes information available to Alt & Associates as of April 24, 2009.

NEW DISCLOSURE RULES UNDER REG. Z

As part of the Housing and Economic Recovery Act of 2008 Congress enacted the Mortgage Disclosure and Improvement Act of 2008. Congress then amended the Mortgage Disclosure Improvement Act in October when it passed the Emergency Economic Stabilization Act of 2008.

To complicate things further, the Federal Reserve Board acted originally to implement regulations under the Mortgage Disclosure Improvement Act, but then had to amend those rules to make additional modifications to comply with the amendments to the Mortgage Disclosure Improvement Act ("MDIA") under the Economic Stabilization Act.

The mechanism is a bit confusing, but the result is that there are new significant rules under the MDIA for initial disclosures and regulations implementing this statute, both of which will become effective by July 30, 2009. In the interest of preparation for these changes, we thought it would be helpful to summarize the new requirements as they are likely to become effective. In the event that there are any significant changes we will advise you when the final rules are published.

Originally, creditors were required to make Good Estimates before credit was extended on residential mortgage loan transactions; that is to say, loans that finance the purchase or initial construction of a consumer's principal dwelling. Disclosures were to be made within 3 business days after the consumer had submitted an application or before the credit is extended whichever occurs first.

Under the MDIA as it now stands, these early disclosures are required not only if the financing is for the purchase or the initial construction of the consumer's principal dwelling but now it applies to a loan secured by a dwelling secured home loan not just the consumer's principal dwelling. Further, fees may not be collected prior to receipt of these disclosures, other than a fee for obtaining a consumer's credit history. (Remember, state law may further restrict when fees may be collected prior to closing.)

For loans secured by a dwelling, creditors must deliver or mail the early disclosure at least 7 business days before consummation. The disclosures also must inform consumers that they are not obligated to complete the transaction simply because the disclosures are provided or because the consumer has applied for the loan.

If the APR contained in the early disclosures become inaccurate because of such things as a change in loan terms, creditors must re-disclose and provide corrected disclosures that the consumer must receive at least 3 business days before consummation.

The statute also amends disclosure requirements for Time Shares which we will not go into at this time.

These changes do not at the moment apply to Home Equity Lines of Credit (HELOC) although new rules relative to HELOC disclosures may be forthcoming. The MDIA also contains additional disclosure requirements for Variable Rate transactions. These are not addressed in the new rules because they will not become effective until January 30, 2011.

CALIFORNIA LOAN MODIFICATIONS AND THE USE OF ATTORNEYS

Over the last year and a half we have advised many companies on the ins and outs (and deep pitfalls) of offering loan modification services. For those interested, please see our article in the Lenders Update as of December, 2008 at www.altandassociates.com .

In the last 6 to 8 months, many loan modification companies have attempted to join their efforts with licensed California attorneys to avoid some of the restrictions on their companies imposed by the California "Foreclosure Consultant" law.

While not necessarily impossible, this does involve serious challenges and limitations. As a result, the California State Bar has published an Ethics Alert, describing those issues in detail. This article can be found on the Bar website at www.calbar.ca.gov/state/calbar/calbar_loan.jsp under Ethics.

Any one contemplating this type of relationship should review the five page Alert in its entirety. However, the Alert sets forth the following rules binding all California lawyers.

- A California lawyer may not pay a referral or marketing fee to a foreclosure consultant or other person for referring distressed homeowners' to the lawyer.
- A California lawyer may not directly or indirectly split any attorney's fees that the lawyer earns from a distressed homeowner client with the foreclosure consultant or any other non-lawyer.
- A California lawyer may not aid a foreclosure consultant or anyone else in the unauthorized practice of law. A lawyer may not form a partnership or joint venture with a foreclosure consultant or other non-lawyer if any of the activities of the business would involve providing legal services. A lawyer may not, under the guise of serving as in-house counsel for a foreclosure consultancy business, perform legal services for a distressed homeowner.
- A California lawyer may not contact in person or by telephone, a distressed homeowner referred to the lawyer by a foreclosure consultant or someone else unless the lawyer has a family or prior profession relationship with the homeowner. Nor may a lawyer direct another to do so on the lawyer's behalf. A lawyer, however, may write to a distressed homeowner who is a prospective client.

Again, if this could impact your operations, review the Alert in its entirety.

BITS AND PIECES

Remember everyone that **May 1, 2009** is the effective date for implementation of two major areas of regulatory change.

1. The Federal Trade Commission **Red Flag Rules** developed pursuant to the Fair and Accurate Transactions Act.

This applies to all Financial Agencies subject to regulation by Federal Agencies and to other entities which regularly extend credit. Mortgage Bankers are clearly within that classification. These creditors must have identity theft policies in place by this date.

(See www.altandassociates.com for October 2008 Lenders Update.)

2. Fannie Mae implementation of the **Home Valuation Code of Conduct**.

This Code governs loans sold to Fannie Mae with an application date of May 1, 2009 or later.

The Code sets forth detailed rules for the selection of an Appraiser and the nature of the Appraiser's relationship to the Lender and other parties.

(See www.altandassociates.com for January 2009 Lenders Update.)

Good luck.

Our monthly Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. 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

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ALT & ASSOCIATES provides regulatory, compliance, 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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