LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612

Mailing Address:
P.O. BOX 4125
IDY, CA 92549-4125

DAVID JEROME ALT
Attorney at Law
David.j.alt@altandassociates.com

TELEPHONE 949.253.5755
FACSIMILE 949.253.5756
www.altandassociates.com

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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 convenience, 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 February 23, 2009.

Homeowners Affordability and Stability Plan

On February 18, 2009 in Mesa, Arizona, President Obama revealed the general outlines of his Homeowner Affordability and Stability Plan. The general outline of the plan was sketched out by the White House, with much more detail to come. The planned effective date is March 4, 2009.

In general, the President set forth a program to allow borrowers with mortgage payments in excess of 31% of their current gross income to modify the first lien loans on their property. The amount of the modified loan may not exceed the current Fannie Mae or Freddie Mac limits. In the first tier, lenders will reduce monthly payments to 38% of the borrower's gross monthly income. Normally this will be done through a reduction in the interest rate and not a reduction in the principal balance. Beyond this lenders and the government may share the cost of reducing monthly payments to 31% of gross income levels. The cost of the second tier of reductions will be split between the government and the lender. Servicers and lenders who complete loan modifications when their borrowers are still current on payments will be given a bonus.

Where homeowners are upside down on their homes but current on their payments, Fannie Mae and Freddie Mac will both be allowed to buy new first lien loans with an LTV of up to 105% of the current value of the property. The devil of course is in the details, which will not be made public until the March 4th effective date.

Two other additional issues:

1. As additional protection, the Treasury Department will establish a $10 billion insurance fund which will compensate lenders if home prices continue to drop or where borrowers once again go into default.
2. President Obama also will seek a modification of existing bankruptcy law to allow judges to reduce the interest or the principal amount of loan balances in bankruptcy proceedings. Obviously this is one of the most politically controversial aspects of the plan.

CALIFORNIA

As part of the ongoing California budget battle, Senate Bill 7 was attached to the final State budget and slipped through without appearing on the radar of many persons knowledgeable in the California Mortgage Banking industry. The bill was signed into law on February 20th. It is not yet effective. Predictions are that it wouldn't become effective until mid June, after implementing regulations are issued and adopted.

The bill will be effective until January 1, 2011 and applies only to loans recorded between January 1, 2003 and January 1, 2008. For applicable loans, the bill adds 90 days to the home foreclosure process. It will do so by extending the initial 90 day period from the date the "Notice of Default" is provided to a borrower, until the "Notice of Sale" can be served on the borrower and recorded, by adding this additional 90 day period. This extension is available if:

1. The loan at issue is a First Mortgage or Deed of Trust, and
2. the property was the borrower's principle residence at the time the loan became delinquent.

The bill would exempt certain loans, if the servicer of the loan applies for an exemption from its applicable regulators, indicating it has implemented a loan modification program meeting certain as yet unspecified requirements.

Regulations providing the details of the exemption, as well as other aspects of the plan, will have to be adopted by the Commissioner of Corporations, the Commissioner of Financial Institutions or the Real Estate Commissioner, as applicable.

NEW YORK

Clearly New York, particularly through Attorney General Cuomo, continues its aggressive posture in actions it is taking against mortgage lenders and brokers.

DISCRIMINATION SETTLEMENT WITH MORTGAGE BROKERS:

HCI Mortgage and Consumer One Mortgage will compensate 455 Latino and Black borrowers for charging these borrowers higher origination rates then similar White borrowers. Cuomo announced that the settlement will include $665,000 in restitution. Along with the monetary settlement the companies will adopt a uniform fee schedule to be disclosed and applied to all potential borrowers. The companies must monitor their own performance and report regularly to the AG's office.

FEDERAL BANK PREEMPTION CASE:

We have previously written of the continuing litigation between Cuomo and the Office of the Comptroller of the Currency to enforce New York's Fair Lending Laws against national banks. The Court of Appeals sided with the OCC and its exclusive and preemptive rights to regulate national banks at the expense of state law. However, on January 16th the Supreme Court of the United States agreed to hear the case and review the 2007 ruling of the Second Circuit Court.

The entire action is based on a claim of Cuomo's that several banks engaged in many practices which were blatantly discriminatory under state law. The OCC claims these laws do not apply to state banks. Attorneys General of all the remaining 49 states have signed a brief targeting the OCC's "pre-emption" campaign, arguing against the intrusion of the Comptroller's office with the state's sovereign powers.

BITS AND PIECES

Since our last Update, several new settlements have been reached between state regulators and Countrywide Financial Corporation.

PENNSYLVANIA

On January 28th the Pennsylvania Attorney General announced a $150 million settlement for mortgage relief and cash assistance based on the allegation that Countrywide practices violated Pennsylvania's consumer protection laws by misleading borrowers and encouraging them to receive loans they did not understand and could not afford.

TENNESSEE

On January 22, 2009 the Tennessee Attorney General announced a settlement with Countrywide to allow approximately 7000 borrowers modification eligibility and provide another 4 million dollars of other relief. The allegations against Countrywide alleged that Countrywide "mislead (sic) consumers into committing to loans they ultimately could not afford".

OREGON

Again on January 29th the Attorney General of the state of Oregon announced a settlement of 1 million dollars with Countrywide Financial Corporation. This settlement will resolve claims based on Countrywide's misrepresentations and deceptive practices. Significantly, the company also will refrain from certain risky subprime and "low documentation loans". Countrywide will also agree to modify 4600 loans which are classified as "non-traditional loans and provide and $90 million dollars in relief to these borrowers. The Attorney

General was quoted as saying that the settlement holds Countrywide accountable, "for the immense damage they caused to thousands of Oregon workers and homeowners. It will also help out Oregonians to stay in their homes during these economic difficult times."

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

susan.graaff@altandassociates.com

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:

David J. Alt, Esq.

David.j.alt@altandassociates.com

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www.altandassociates.com