

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 I

We wish all of you a happy and successful New Year.

We normally divide the **Lenders Update** into Federal, State and Predatory Lending issues. With the start of the New Year, we will add a fourth section dealing with state licensing issues across the country. This section will be written by Attorney Jennifer Dewberry who is a 1996 graduate of Marquette Law School and is in charge of Alt & Associates' state licensing department. Every month she will provide us with information regarding new licensing requirements or issues.

This month we thought it would be useful to provide you with a state mortgage lending licensing matrix detailing the basic requirements of licensing in every state. We have attached this as an appendix to this issue. We hope it will be helpful to those of you who are thinking of expanding your practices into more states. Jennifer has also provided us with an article concerning Illinois' recent loan originator registration law.

Meanwhile, around the country, legislative activity is just beginning to accelerate with the start of new state legislative sessions. However, we do have a few matters to report including a **California** Court of Appeals case determining whether yield spread premiums should be included within the points and fees used to calculate whether a loan is a "Covered Loan". We also discuss additional statutory changes to California Department of Real Estate reporting requirements. In **Georgia**, the Georgia Department of Banking and Finance has provided guidance regarding licensing requirements for lead generation companies and "co-brokering" brokers. Finally, we have a brief update on the status of municipal predatory lending ordinances in **Ohio**.

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 or cases can be easily identified in the summary. Our Update includes changes in legislation available to Alt & Associates by January 15, 2005

FEDERAL ISSUES

None to report.

PREDATORY LENDING

CALIFORNIA

The Fourth Appellate District Court of Appeal of California in the case of Wolski v. Fremont Investment and Loan has considered for the first time in California whether a yield spread premium can make a loan a “Covered Loan” as defined in California’s predatory lending law. The borrower contended that the loan was a “Covered Loan” because the loan amount was less than \$250,000 and his total points and fees payable at closing exceeded six percent of the loan amount.

Fremont Investment & Loan responded that the total points and fees computed by the borrower exceeded six percent only because the borrower had erroneously included a \$3,700 yield spread premium in his calculation. Fremont contended that yield spread should not be included in points and fees.

The trial court agreed with Fremont. The defendant then appealed the case to the Fourth District Court of Appeals. That court felt that yield spread premiums did not fall within the language of the statute because yield spread premiums are not “payable at or before closing”. The court found these words were “plain, their meaning clear”. The Fourth District felt that if yield spread premiums were meant to be included as points and fees, the legislature would have included these charges in the statute with appropriate language.

Please be aware that this is not “binding authority” in other districts in California and, as of the date of this article, the case is still open to appeal.

OHIO

One of the first predatory lending ordinances in the country was enacted in Cleveland, Ohio. The ordinance has long been under appeal by The American Financial Services Association. An Ohio Appellate Court has finally made a determination that the ordinance is not in conflict with state law. In other words, state law does not preempt the ordinance. Therefore, the ordinance should be enforceable.

However, Dayton v. Ohio, which is another Ohio Appellate Court case, found that a similar City of Dayton predatory lending ordinance was, in fact, preempted by state law. We can assume that the City of Cleveland case will be appealed to Ohio’s Supreme Court.

STATE LICENSING

ILLINOIS’ RECENT LOAN ORIGINATOR REGISTRATION LAW

Effective **July 1, 2004**, Illinois enacted new legislation requiring all loan originators employed by an Illinois residential mortgage licensee, both in and outside Illinois, to be registered with the Illinois Office of Banks and Real Estate (OBRE). Employees of entities exempt from licensure

under the Residential Mortgage License Act of 1987, such as banks, are also exempt from registration.

Application Requirements

The initial application is for one year and is renewed annually thereafter. The application requires the following information:

- Complete identification information, including home and work addresses, telephone numbers, driver's license and social security number;
- Information regarding convictions or adverse judgments on prior felonies, and criminal and civil acts involving monies or breach of trust or moral turpitude or misfeasance or malfeasance.
- Employment history for five (5) years immediately preceding the date of application;
- Confirmation of employment with an Illinois residential mortgage licensee;
- Statement of experience (used to determine deadlines for testing);
- Statement that the applicant has been issued, denied or forfeited a professional or occupational license in any jurisdiction;
- Statement that the applicant is in compliance with tax payments, student assistance loans, and child support payments; and
- Such other information as OBRE requires.

Importantly, OBRE will conduct investigations into criminal history, credit history and experience with other regulatory agencies.

All applicants are required to pass the loan originator examination as a requirement for registration.

Loan Originators Already Employed by Illinois Residential Mortgage Licensees

All loan originators employed by Illinois residential mortgage licensees, both in and outside Illinois, must apply for Provisional Registrations which are effective until June 30, 2005. The loan originators must complete the application process for a permanent registration (which is valid for one year) by February 28, 2005 in order to receive the permanent registration prior to the expiration of their provisional registration on June 30, 2005. Permanent Loan Originator Certificates of Registration will be valid through June 30, 2006.

Each applicant for a Loan Originator Certificate of Registration who is able to verify current employment by a licensee and who has 2 or more years of loan origination experience in the 36 months immediately preceding the date of application is not required to pass the examination until June 30, 2005. Each applicant who is able to verify possession of a professional certification approved by the Commissioner that requires at least 18 hours of continuing education every three years will not have to take the residential mortgage financing fundamentals portion of the examination and will only have to take only the legal, regulatory, and ethical requirements portion of the examination.

Transfer of Registration to New Employer

Under the new law, an Illinois residential mortgage licensee must apply for approval to employ a Loan Originator as an exclusive employee on a temporary basis, pending the transfer of the registration to the new employer. The application for transfer is valid for 45 days.

Additional Information

Applications and additional information are available on the Illinois Department of Financial and Professional Regulation, Division of Banks and Real Estate website at <http://www.obre.state.il.us/RESFIN/LoanOriginators.htm>. The website does allow for, and in fact encourages, online application.

STATE ISSUES

CALIFORNIA

A.

Section 10131.8, effective on **January 1, 2005**, has been added to California law governing California Department of Real Estate brokers.

The statute states that a real estate broker who acts as a loan broker and who meets the following requirements shall notify the Department annually in writing:

- The real estate broker is an approved lender for FHA, VA, Farmers Home Administration, Ginnie Mae, Fannie Mae and Freddie Mac.
- The real estate broker makes residential mortgage loans to a loan applicant for a residential mortgage loan by using or advancing the broker's own funds or by making a commitment to advance the broker's own funds.
- The real estate broker makes the credit decision.
- The real estate broker at all times maintains a minimum of \$250,000 tangible net worth.

“Own funds” as used in the statute means

- cash, corporate capital, or warehouse credit lines or other sources that are liability items on the real estate broker's financial statement,
- cash, corporate capital, or warehouse credit lines or other sources that are liability items on the financial statements of an affiliate of the real estate broker.

“Own funds” does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

B.

This past year, the California legislature passed AB 1825, relating to employment practices. This new law requires that employers with 50 or more employees provide at least two hours of biennial training and education regarding sexual harassment to all supervisory employees. The first training must be completed by January 1, 2006 for all employees who are employed as of July 1, 2005, and must be given within 6 months of the hiring of any new supervisory employees after that date. Thereafter, two hours of training must be given every two years. The training must include “practical examples” regarding prohibitions of sexual harassment under state and federal law, prevention, correction of situations and remedies for victims of sexual harassment.

The person conducting the training must have “knowledge and expertise” in the prevention of harassment, discrimination and retaliation.

Employers covered under this law include not only those with 50 or more W-2 employees, but also those who receive services from 50 or more persons acting as agents of the employer, even if independent contractors.

GEORGIA LICENSING REQUIREMENT

In its Monthly Summary of Mortgage Activities for December, Georgia Department of Banking and Finance has provided its opinion on licensing requirements for lead generation companies and co-brokering companies. Under most circumstances, Georgia policy will now require these companies to be licensed.

For lead generation companies, the need for a Georgia Mortgage License depends on the amount of information being obtained by any company. It does not depend on whether there is a fee being paid or charged. A company cannot collect what would be considered sufficient data for the application process to begin, without being licensed. Telemarketing/lead generation work cannot be paid on a commission basis but must be paid as part of an overall fee or contract. Whether a license is required for lead generation companies is not determined by whether a payment is made for the lead but rather the amount of information being requested.

Georgia also is concerned about unlicensed entities which are offering Georgia licensees co-brokering arrangements which provide Georgia licensees an opportunity to obtain Georgia property leads. The non-licensee obtains application information and will, for a fee, sell the lead to a Georgia licensee. Georgia licensees must, according to the department, realize that they are dealing with an unlicensed company and are subjecting their license to administrative action, most likely revocation.

We would recommend that, if you are involved in any of these activities, you review the December issue of the Georgia Department of Banking and Finance, “Monthly Summary of Mortgage Activities”. Also, please remember these policies only apply to Georgia licensing requirements. Other issues such as RESPA should be reviewed if these activities are part of your business plans.

LEGISLATION EFFECTIVE DATES

State	Statute	1st Advised	Effective	Statute Type
Louisiana	HB 1143	August 30, 2004	January 1, 2005	Sale of Goods
California	AB 2693	November 30, 2004	January 1, 2005	Real Estate Brokers
California	AB 1979	November 30, 2004	January 1, 2005	Variable Interest Rates
California	§10131.8	January 30, 2005	January 1, 2005	Real Estate Brokers

Lenders Update is published via e-mail as a service to our colleagues in the financial industry throughout California and the United States. The complete Lenders Update Manual is available on our website at

www.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., Kristin S. Stergakos, Esq. or Jennifer Dewberry, Esq. at
david.j.alt@altandassociates.com**