

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## AN ALT & ASSOCIATES NEWSLETTER

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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 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. There has been no new major legislation over the holidays, but we did want to catch you up on a number of either helpful or interesting issues:

**The Update includes information available to Alt & Associates as of January 29, 2009.**

## New York Home Valuation Code of Conduct

As we know, New York Attorney General Andrew Como reached an agreement with Fannie Mae and Freddie Mac for implementation of a Home Valuation Code of Conduct (“HVCC”) for appraisals. The HVCC was issued in response to an investigation conducted into the activities of an appraisal management company and Washington Mutual. The HVCC becomes effective for single family mortgage homes that are originated after May 1, 2009 and delivered to one of the GSE’s.

The term origination in this case means, all loans which have a date of application after May 1<sup>st</sup>. The Code does not apply to multiply family loans.

Further information can be obtained in a National Association of Mortgage Brokers press release dated December 24, 2008 which may be found on their website at [www.namb.org](http://www.namb.org). The press release contains a copy of the Home Valuation Code of Conduct. NAMB has strongly opposed the Agreement.

## **Colorado Clarifies License Requirements for Loan Modifiers**

The question of whether a license is required for companies engaged in obtaining loan modifications is obviously a question which must be dealt with on a state by state basis. As we said in our December Lenders Update, California requires licensing through the Department of Real Estate.

Before the close of the year the Colorado Division of Real Estate clarified this issue for Loan Modifiers operating in Colorado. In the Division's opinion, the Colorado Mortgage Broker's Law applies to these Loan Modifiers who deal with borrowers and their lenders to negotiate the terms of a modification of an existing loan.

The division found that individuals negotiating Loan Modifications are at least "indirectly" Mortgage Brokers and thus required to be licensed. The license requirement also applies to individuals who are supervising others involved with Loan Modifications and are also required to be licensed. All requirements of the Colorado Brokerage Law apply.

The Division's decision does not apply to those employed by non-profit HUD - Approved Counseling Agencies, where the individuals in question do not receive any compensation from the Loan Modifications and to individuals who work for servicing companies that are operating on behalf of lenders.

## **Countrywide Refunds Millions to North Carolina Borrowers**

Borrowers in N. Carolina received an early Christmas present when Countrywide Home Loans and its affiliate agreed to refund approximately 11.5 million dollars to N. Carolina borrowers. This largess obviously does not result from the voluntary action of Countrywide but rather as a result of a settlement with the N. Carolina office of the Commissioner of Banks. The settlement results from an investigation by the Division of Banks into fees levied by Countrywide against almost 4000 borrower's who were overcharged on first and second lien loans, Countrywide will also fund making over 2 million dollars in grants to a group of housing counseling agencies providing foreclose counseling and other services in N. Carolina project.

## **Massachusetts Restricts Foreclosures**

The Massachusetts Supreme Judicial Court recently affirmed a trial court's decision preventing the defendant, Fremont Investment and Loan, from foreclosing on a class of loans called "structurally unfair" without court approval. The trial court's initial decision was issued in February 2008. Please remember that this is a decision effecting only Massachusetts sub-prime loans.

The thrust of the decision is that sub-prime lenders are acting illegally when they make loans to borrowers knowing that they likely cannot comply with the terms of the loans; loans which would predictably turn into foreclosures.

The court found the Massachusetts Consumer Protection Act prohibits lending without regard to a borrower's ability to repay. Such lending is an unfair and deceptive act in violation of this law. When a lender makes loans without regard to the borrower's repayment ability, it has a duty to avoid foreclosure and work out reasonable repayment terms with the borrower. The category of loans includes but is not limited to, 100% "LTV loans and "no documentation loans".

Fremont must work with the AG's office to achieve workouts of these loans with affected borrowers. The ruling applies to purchasers of these loans and the loan's servicers.

The Trial Court was affirmed by the Supreme Court in finding that the lender should have known that the loan features in question guaranteed the inability of the borrowers to comply with the loan terms. The properties were doomed for foreclosure.

The Court also found that Fremont knew that while the borrowers would be unable to pay the loans Fremont anticipated that the continual increase of house prices would enable these loans to be refinanced. The Supreme Court found this thinking to be "such unsupportable optimism", that it did not represent good underwriting judgment. As a consequence this conduct was "unreasonable and unfair to the borrower".

**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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