

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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This month we report on a bit of retrenchment in New Jersey with SB 279, which amends the New Jersey Home Ownership Security Act of 2002 to deal with some of the criticism of this anti-predatory lending legislation. Elsewhere, we have new regulations in New Mexico relative to its Home Mortgage Protection Act, Louisiana's new requirement for registration of telephone solicitors and establishment of its own "Do-Not-Call" registry, as well as a number of new statutes in other states.

At the request of several of our readers, we begin this month with an update of the "effective dates" of new legislation. We often report on the enactment of a new statute months before its "effective date". While we try at that time to put the "effective date" in our summary, we will now, in addition, provide a continuing matrix of new legislation and the date it becomes effective. We hope this helps you stay current.

Just a reminder, if any of you have any suggestions as to how we can provide you a better Lenders Update, please let us know and we will incorporate those suggestions wherever possible.

*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 new material in detail where relevant. For your convenience, where applicable, the statute, regulation or case can be easily identified in the summary. Our Update includes changes in the legislation available to Alt & Associates by July 15, 2004*

## STATE ISSUES

### LOUISIANA

#### A.

Louisiana SB 239 amends penalty fee restrictions for NSF payments. The restrictions now apply to electronic debits in addition to checks.

Charges for NSF payments by check or electronic debit are limited to 5% of the amount of the check, not to exceed \$15.00. The parties in a consumer credit transaction may also contract for an

additional charge which may not exceed \$25.00 or 5% of the amount of the check, whichever is greater.

**B.**

Effective **June 10, 2004**, Louisiana HB 332 provides additional exemptions from residential mortgage lender licensure and continuing education requirements for certain direct or indirect subsidiaries of holding companies.

The Act provides that employees and the exclusive agents under written agreement of any licensed mortgage lender which is a direct or indirect subsidiary of a financial or bank holding company, savings bank holding company, or thrift holding company, are exempt from residential mortgage lender licensure and continuing education requirements.

**C.**

Louisiana HB 554 restricts the collection of delinquency charges and takes effect **July 6, 2004**.

The Act provides that a delinquency charge may not be collected on an installment or other regular payment that is paid in full within ten days after its scheduled due date. This applies even though an earlier maturing installment, other payment, or delinquency charge on an earlier installment or other payment may not have been paid in full.

**D.**

Louisiana HB 1030 provides for registration of telephone solicitors and prohibits telephone solicitation of residents listed on the state or federal “do not call” registry. The Act became effective **July 12, 2004**.

The Act prohibits any telephonic solicitation from a telephonic solicitor to a residential telephonic subscriber whose number appears on the state’s “do not call” listing, or the national “do not call” registry.

Solicitors must register annually and pay a \$400 fee.

**MISSOURI**

Missouri SB 1086 prohibits certain acts relating to insurance in conjunction with financing a residential mortgage.

The Act prohibits requiring a residential mortgage borrower to purchase homeowner’s insurance in an amount exceeding the replacement value of the real property. The Act further prohibits requiring that any borrower pay a separate charge to substitute the insurance policy of one insurer for that of another.

**NEW HAMPSHIRE**

New Hampshire SB 500 provides regulations for escrow accounts of mortgage companies. The Act takes effect **July 1, 2004** and requires mortgage companies to pay interest for moneys held in

escrow accounts at a rate set by the bank commissioner. The rate is subject to change February 1 and August 1 of each year.

## **RHODE ISLAND**

Rhode Island HB 7799 and SB 2753 regulate the handling of loan payoffs by mortgage lenders that own or service loans secured by a mortgage on property located in Rhode Island. The Acts become effective **November 1, 2004**.

Every lending institution or other entity that owns or services a loan, secured by a mortgage on property located in Rhode Island, must:

- In most circumstances, provide to the obligor within three business days after receipt of a written or telefaxed request, the exact payoff due the lender on the loan;
- Permit the payoff to be made to place of business located in the state;
- Accept the interest calculated as of the business day that full payment is made; and
- Issue, or discharge the mortgage securing the loan within thirty days.

# **PREDATORY LENDING**

## **NEW JERSEY**

New Jersey SB 279 makes various changes to the “New Jersey Home Ownership Security Act of 2002”. The Act deletes provisions concerning prohibitions for covered loans and other provisions concerning “flipping” home loans. The Act became effective **July 6, 2004**.

A further significant change is that a creditor who, when acting in good faith, fails to comply with provisions of the Act, will not be held liable for the violation if the creditor establishes that either:

- Within 45 days of the loan closing, the creditor has made appropriate restitution to the borrower, and appropriate adjustments are made to the loan; or
- Within 365 days of the loan closing if the failure was not intentional or did not result from a bona fide error, and prior to receiving any notice from the borrower of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made to the borrower, and appropriate adjustments are made to the loan.

## **NEW MEXICO**

### Reasonable Due Diligence Standard for Determining High-Cost Home Loans

A person who purchases, or is otherwise assigned, a high-cost home loan is not subject to an action for certain claims and defenses if the person can demonstrate that a reasonable person exercising reasonable due diligence could not determine that the mortgage in question was a high-cost home loan. The regulation sets forth criteria for this evaluation.

### Flipping

A creditor will be presumed not to have “knowingly and intentionally” engaged in the unfair act or practice of flipping a home loan if the new loan provides a “reasonable, tangible net benefit” to the borrower. In evaluating whether lenders are in compliance with the flipping provision, the Financial Institutions Division will focus on whether a lender has policies and procedures in place

that were used to determine that borrowers received a reasonable, tangible, net benefit in connection with the refinancing of loans.

## LEGISLATION EFFECTIVE DATES

State	Statute	1st Advised	Effective	Statute Type
Indiana	HB 1229	April 30, 2004	July 1, 2005	Predatory Lending
West Virginia	HB 4168	April 30, 2004	June 10, 2004	Licensing Requirements
Wisconsin	SB 279	April 30, 2004	July 2, 2005	Loan Originators
Connecticut	HB 5411	May 30, 2004	October 1, 2004	Licensing/Advance Fees
South Carolina	HB 4818	May 30, 2004	May 11, 2004	Delinquency Charges
New Hampshire	HB 1320	June 30, 2004	July 23, 2004	Licensing Requirements
Connecticut	SB 157	June 30, 2004	May 21, 2004	Rate Lock-Ins
New Jersey	AB 2052	June 30, 2004	November 11, 2004	Home Improvement Contracts
Alaska	HB 15	June 30, 2004	July 1, 2004	Telephone Solicitations
Tennessee	SB 3455	June 30, 2004	January 1, 2005	Managing Principals/Loan Originators
Maryland	HB 1447	June 30, 2004	October 1, 2004	Property Insurance
Louisiana	HB 332	July 30, 2004	June 10, 2004	Licensing and Education
Louisiana	HB 554	July 30, 2004	July 6, 2004	Delinquency Charges
Louisiana	HB 1030	July 30, 2004	July 12, 2004	Telephone Solicitations
New Hampshire	SB 500	July 30, 2004	July 1, 2004	Escrow Accounts
Rhode Island	HB 7799	July 30, 2004	November 1, 2004	Loan Payoffs
New Jersey	SB 279	July 30, 2004	July 6, 2004	Predatory Lending

## FEDERAL ISSUES

*No matters to report this issue.*

**Lenders Update is published via e-mail as a service to our colleagues in the financial industry throughout California and the United States.**

**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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