

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

Volume XIII

July 2006

Issue VII

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 July 15, 2005

NATIONAL ISSUES

STATE LICENSING

Over approximately the last two years, the Conference of State Bank Supervisors has conducted a study and development program for a nationwide licensing system for state residential mortgage lending authorities. On June 8, 2006, the organization announced the results of its efforts. If the regulators can obtain appropriate authorization, the plan would be to host a uniform mortgage industry license application site on the web, allowing applicants to apply for a lending license and track their license applications. The plan is for the system to be consumer friendly and allow consumers to check licensing and enforcement issues relative to particular lenders.

Approximately 30 state agencies have indicated that they will participate in the new system. The Association hopes to have it implemented by January 2008. With our many years of involvement with the myriad application procedures throughout this country, we can only wish this effort the best of luck. However, implementation within less than 18 months seems a bit optimistic.

ADMINISTRATIVE ACTIONS TAKEN BY HUD'S MORTGAGEE REVIEW BOARD AGAINST HUD APPROVED MORTGAGEES;

From time to time we think it helpful to supply our readers with very brief summaries of the action take by the HUD Mortgagee Review Board ("MRB"). The MRB announced enforcement actions on June 29, 2006, for the period between March 14 and May 16, 2006. In all, there were seventeen announced enforcement actions. Penalties ranged from the low five figures to six figures. There was a commonality within many of these enforcement actions that provide us some lessons. The two issues that stand out are that, (a) almost uniformly, the Board found

failures to comply with quality control plans and HUD/FHA requirements and (b) decisions also frequently referenced non-exclusive employees and improper branch arrangements. (See prohibitions and restrictions on Net Branching)

While not mentioned in the notice, we can assume that many of these actions also required the mortgagee to sign appropriate indemnity agreements for loans involved in these violations.

FORECLOSURE CONSULTANT LEGISLATION

As we reported in our last issue, additional states have followed California's lead in legislation regulating foreclosure consultants and mortgage foreclosure purchasers. For instance, on June 30, 2006 and July 3, 2006 respectively, Rhode Island's Senate Bill 2777 and House Bill 7650 became law. These statutes regulate the actions of mortgage foreclosure consultants and mortgage foreclosure purchasers. We would suggest that anyone interested in this business model in Rhode Island pay careful attention to this legislation.

STATE ISSUES

ILLINOIS PREDATORY LENDING DATABASE

There have been several issues with the Illinois Residential Real Property Disclosure Act as it regards the predatory lending database pilot program. Senate Bill 304 was signed into law by the Governor on **July 14, 2006**, to deal with these issues.

This new statute requires Illinois to announce a start date for its pilot program which can be no later than **September 1, 2006**. The program will apply to mortgage applications taken on or after that date. Title insurers or other closing parties, must attach a certificate of compliance before recording the mortgage. Finally, and most importantly to credit counselors, the law provides unlimited immunity for offering of counseling services as long as the services are provided in good faith.

The law is effective **immediately**.

MONTGOMERY COUNTY, MARYLAND PREDATORY LENDING ORDINANCE

As we previously discussed, Montgomery County in Maryland enacted Council Bill 36-04 in November 2005. This Bill was essentially an anti-predatory lending measure. The Circuit Court of that County issued an injunction in March 2006 prohibiting the Bill from going into effect. On July 6, 2006, the Court heard arguments on the law's validity, particularly as it relates to pre-emption by state law. The Court took the matter under advisement. We will let you know when a ruling is made.

OKLAHOMA SETTLEMENT STATEMENT

On May 25, 2006 the Department of Consumer Credit adopted final rules changing continuing education requirements for Oklahoma mortgage brokers and it is effective **July 13, 2006**. The requirement that Brokers complete 16 credit hours of continuing education remains in place however, the drop dead date for compliance has been changed from December 31, 2006 to the date of license renewal or re-activation. The regulations also amplify as to allowable fees and their manner of disclosure under Oklahoma law. Specifically, they reflect how fees should be

disclosed under lines 800, 801, 802 and 808 and in addition, on the proper disclosure of yield-spread premiums. Because they are technical and lengthy in content, we would refer you, if interested, to OAC 160:55-1-2, 160:55-11-1.2.-1.3. if your operations include Oklahoma.

Also in Oklahoma, the Department of Consumer Credit further adopted other new rules effective **July 13, 2006**. These new rules incorporate changes consistent with Federal Law to “maintain Oklahoma’s exemption from federal regulation”. These changes are related to High-Cost Loans and can be found at OAC 160:45-9-2.

OREGON LOAN ORIGINATORS

As of **July 1, 2006**, Oregon has changed its continuing education requirements for all loan originators to eliminate the use of proctored testing. This change is more convenient for many loan originators as they can take an “on-line” course and exam in the comfort of their own home.

Please note that this change does not affect entry-level loan originators. Entry-level loan originators must still take a proctored state exam.

RHODE ISLAND

Effective **December 31, 2006**, Rhode Island has created an anti-predatory lending bill called the “Rhode Island Home Loan Protection Act”. This act establishes prohibited acts and practices to protect borrowers from predatory lending practices.

Home Loan

A “Home Loan” is defined as a loan, including an open end credit plan, which:

- Is not a reverse mortgage transaction;
- Is secured by a mortgage of deed of trust on real estate designed principally for occupancy of 1 to 4 families which is or will be occupied as the borrower’s principal dwelling; or
- Is secured by a security interest on a manufactured home which is or will be used as the borrower’s principal dwelling;

Prohibited Acts and Practices Regarding Home Loans

- No creditor making a Home Loan shall finance, directly or indirectly any credit life, disability, unemployment or property insurance, or any other life or health insurance, or any payments financed by the creditor for any debt cancellation or suspension agreement;
- No creditor shall knowingly or intentionally flip a home loan. Flipping is defined as the refinancing of the existing home loan within the prior 60 months when the new loan does not have reasonable, tangible net benefit to the borrower;
- No creditor shall recommend or encourage default on an existing loan or other debt in connection with the closing of a home loan that refinances all or a portion of that debt;
- No Home Loan may contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This does not apply to acceleration due to default or a due-on-sale provision;
- No Home Loan may contain a provision that allows a party to require the borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in Rhode Island.

High-Cost Home Loan

A “High-Cost Home Loan” means a home loan (as defined above) which in the terms of the loan meet or exceed one or more of the two thresholds:

- The “Rate Threshold” which means the interest rate will equal or exceed 8% points for first lien loans, or by more than 9 percentage points on subordinate mortgage lien loans, the yield on Treasury securities on the 15th day of the month immediately preceding the month in which the loan application was received by the lender;
- The “Total Points and Fees Threshold” which means points and fees which exceed (1) 5% of the total loan amount on a loan of \$50,000 or more; or (2) 8% of the total loan amount on a loan less than \$50,000.
 - Point and Fees are defined as:
 - All items included in the finance charge except interest or a time price differential;
 - All real-estate related fees such as title examination, abstract of title, title insurance, fees for document preparation, fees for notary and credit report, fees paid for property appraisal or inspections and fees paid into escrow or trustee accounts.
 - All compensation paid directly by the borrower to the loan broker, or compensation paid indirectly by anyone other than the borrower that is in excess of 1% of the total loan amount.
 - The costs of all premiums financed by the creditor directly or indirectly for any credit life, disability, unemployment, property insurance or any other life or health insurance or payments financed by the creditor for any debt cancellation or suspension agreement;
 - The maximum prepayment fees and penalties allowed under the loan documents;
 - All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan originated or held by the same or affiliate of the lender;
 - For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties allowed under the loan documents plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.
 - Points and Fees do not include:
 - Points and fees up to 1% of the total loan amount attributable to bona fide fees paid to the government agency that insures the payment of the home loan plus any amount up to 2% of the total loan amount attributable to a bona fide discount points or conventional prepayment penalty. The total points and fees cannot exceed 3% of the total loan amount.
 - Taxes, filing fees, recording and other charges paid to public officials;
 - Bona fide and reasonable fees paid to third parties for:
 - Tax payment services;

- Flood certification
- Pest infestation and flood determination
- Appraisal fees
- Inspections performed prior to closing;
- Credit reports;
- Surveys;
- Attorneys' fees;
- Notary fees;
- Escrow charges;
- Title insurance premiums
- Fire and Hazard Insurance and Flood insurance premiums as long as the borrower can choose the insurance provider;

Limitations and Prohibited Practices Regarding High-Cost Home Loans

- No creditor shall directly or indirectly finance any points or fees which total is greater than 5% of the total loan amount or \$800, whichever is greater;
- No prepayment fees or penalties allowed;
- No High-Cost Home Loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments; This does not apply when the payment schedule is adjusted due to the seasonal or irregular income of the borrower;
- No High-Cost Home Loan may contain a provision that increases the interest rate after default. This does not apply to variable rate loans;
- No High-Cost Home Loan may include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
- A creditor may not make a High-Cost Home Loan without first receiving certification from a counselor with a 3rd party nonprofit organization approved by HUD, that the borrower has received counseling;
- A High-Cost Home Loan cannot be made to a borrower unless a reasonable creditor would believe that the borrower residing in the home will be able to make the scheduled payments. A rebuttable presumption exists that a borrower residing in a home can make the scheduled payments if the total debt the borrower has does not exceed 50% of the borrower's monthly gross income;
- A Creditor may not pay a contractor under a home-improvement contract from the proceeds of a High-Cost Home Loan unless:
 - The creditor obtains a signed and dated completion certificate showing the home improvements were completed; AND
 - The instrument is payable to the borrower or jointly to the borrower and the contractor;
- A creditor may not charge a borrower any fees or other charges to modify, renew, extend, amend or defer any payment under the terms of a High-Cost Home Loan;
- A creditor shall not make a High-Cost Home Loan that provides for a late payment fee unless:
 - The late fee does not exceed 3% of the amount past due;
 - If a late charge is applied it cannot be charged until the payment is 15 days past due (or 10 days past due in a bi-weekly mortgage payment arrangement);

- The late fee can only be imposed once to a single late payment
- The creditor must treat payment as posted the same day it was received;
- All High-Cost Home Loan Documents that create a debt or pledge property as collateral shall contain the following notice on the 1st page in a conspicuous manner:
“NOTICE: THIS IS A HIGH-COST HOME LOAN SUBJECT TO SPECIAL RULES UNDER STATE LAW. PURCHASERS OR ASSIGNEES OF THIS HIGH-COST HOME LOAN MAY BE LIABLE FOR ALL CLAIMS AND DEFENSES BY THE BORROWER WITH RESPECT TO THE HOME LOAN.”

Assignee Liability

- Any person who purchases or is assigned a High-Cost Home Loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor of the loan unless, through a preponderance of the evidence the purchaser/assignee shows:
 - It has in place at the time of the purchase or assignment of the loans, policies that expressly prohibit its purchase or acceptance of assignment of any High-Cost Home Loans;
 - It requires by contract that a seller or assignor of Home Loans to the purchaser or assignee represents and warrants to the purchaser/assignee that (1) the seller/assignor will not sell or assign any High-Cost Home Loans to the Purchaser/Assignee; or (2) that such seller/assignor is a beneficiary of a representation and warranty from a previous seller/assignor; and
 - It exercises reasonable due diligence at the time of purchase or assignment of High-Cost Home Loans or within a reasonable period of time after, to prevent the purchaser/assignee from purchasing or taking assignment of any High-Cost Home Loans provided that reasonable due diligence shall provide for sampling and not loan-by-loan review;
- A borrower acting only in an individual capacity may assert claims that the borrower could assert against a creditor of a High-Cost Home Loan against any subsequent holder/assignee of the High-Cost Home Loan as follows:
 - Within 5 years of closing a High-Cost Home Loan;
 - At any time during the term, after an action to collect or foreclose on collateral secured by the High-Cost Home Loan, after acceleration or where the High-Cost Home Loan has become 60 days in default, any defense, claim or counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan;
 - These actions by the borrowers is limited to amounts required to reduce or extinguish the borrower’s liability under the High-Cost Home Loans plus amounts required to recover costs, including reasonable attorneys fees.

WASHINGTON LOAN ORIGINATORS

Regulations for the new Mortgage broker Practices Act are expected to be complete by **August 23, 2006**. The Mortgage Broker Practices Act requires loan originators to pass a test and hold a license in order to conduct business.

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

Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at www.altandassociates.com

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 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.

David.j.alt@altandassociates.com