

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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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 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, cases or website can be easily identified in the summary. Our Update includes information available to Alt & Associates by July 17, 2007

## FEDERAL ISSUES

### STATEMENT ON SUB-PRIME LENDING

On July 10, 2007, the Federal Joint Agencies (DOT, FRS, OCC, FDIC, OTS and NCUA) issues statements covering sub-prime mortgage lending. The statement is directed at their supervised institutions, which are federally chartered depository institutions. The Guidelines can be found at 72 FR 37569, Vol. 72 No. 131. Generally the Guidance clarifies how institutions can offer certain adjustable rate mortgage products in a safe and sound manner, and in a way that clearly discloses the risks that borrowers may assume.

Following this, the Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators and the National Association of Consumer Credit Administrators issued a joint statement on sub-prime lending to state agencies that regulate residential mortgage brokers and companies. The statement was issued in response to the Federal Financial Regulatory Agencies statement mentioned above. These organizations endorse the statement and announced plans to issue similar statements to cover lenders not regulated by Federal Financial Regulatory Agencies. Twenty six state mortgage regulators have stated that they intend to expedite implementation. These states are Alabama, California, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington and Wyoming.

The CSBS/AARMR/NACCA statements substantially mirror the interagency federal Guidance, which contains management practices, underwriting standards and consumer protection provisions that should be adhered to when marketing ARM products to sub-prime borrowers. The Guidance will be followed by an Examination Guidance for state supervisors to use in

evaluating state licensed mortgage lenders' compliance. Copies of these documents and other information can be found on the CSBS website at [www.csbs.org](http://www.csbs.org)

## STATE ISSUES

### CONNECTICUT

#### **New Advertising Restriction**

House Bill 7073 became law in Connecticut in **June 2007**. It addresses an issue about which many lenders have been concerned. The new Connecticut law now defines an unfair or deceptive act or practice to include solicitation of potential borrowers based on personal information about the consumer, directly or indirectly from the consumer reporting agency, without the knowledge or permission of the lender or broker with which the consumer initially applied.

Under the new law, the soliciting lender must, clearly and conspicuously, state in the initial phase of the solicitation, that this lender is not affiliated with the lender or broker with whom the potential borrower initially applied. The law also imposes upon an initial solicitation, the duty to comply with the provisions of the Federal Fair Credit Reporting Act relating to pre-screening solicitations that use consumer reports, including the requirement to make a firm offer of credit. These lenders also must not, knowingly or negligently, use information from a mortgage broker Trigger Lead to solicit borrowers who have opted out of pre-screened offers of credit under the FRCR. A mortgage Trigger Lead means a consumer report obtained pursuant to the Federal Credit Reporting Act where the issuance of a report is triggered by an enquiry made with a consumer reporting agency in response to an application for credit.

Finally, the law provides that no mortgage lender or mortgage broker shall engage in unfair or deceptive acts or practices in soliciting an application for first or secondary mortgage lending, when such solicitation is based in whole or in part on information contained in a mortgage Trigger Lead.

#### **The Uniform Prudent Management of Institutional Funds Act.**

Senate Bill 1143 also became law in **June 2007** and further regulates a number of lending functions in the state.

Among other things, the law now exempts from the term "Mortgage Originator", individuals whose responsibilities are limited to clerical and administrative tasks and who do not solicit borrowers, take applications or negotiate loans.

Licenses must now notify the Commissioner at least 21 calendar days prior to a change or location and the Commissioner must not "disapprove" the change within that period.

Finally, settlement funds dispersed on a new first mortgage, or to refinance an existing first mortgage, must be dispersed at the termination of any right to rescind the loan transaction or at the time of consummation, whichever is later.

### MAINE

## Anti-Predatory Lending

Maine enacted a comprehensive Anti-Predatory Lending Law in June of 2007. It is now chaptered as Chapter 273 and can be found in its complete form on the Maine Office of Consumer Credit Regulation site, [www.maine.gov/pfr/consumercredit/index.shtml](http://www.maine.gov/pfr/consumercredit/index.shtml) under News - Maine's New Anti-Predatory Lending law.

The statute deals with a number of subjects such as the Uniform Multi-State Automated Licensing System, Non-Traditional Mortgages and adoption of relevant Guidance, and the use of prescreened Trigger Lead information.

Perhaps most importantly, the new statute deals with Anti-Predatory Lending. Its provisions are reasonably similar to those in other states. As always, for those of you operating in Maine, we suggest a detailed review of the statute.

However, the following is a brief summary of the predatory lending provisions.

A "High Rate, High Fee Mortgage" is a Residential Home Loan regardless of whether it is Residential Mortgage Transaction or Open-End Credit. The loan must exceed one of two triggers:

- Ø At the time of origination, the APR must exceed, the rate set in what is know as "Section 32" of Reg. Z., or
- Ø The total points and fees payable by the consumer, at or before closing, will exceed the greater of 5% of the total loan amount or \$800 for loans of \$40,000 or more, or 6% for loans less than \$40,000.

If the loan is a "High Rate High Risk Loan", then the following applies:

- Ø A lender shall not make a High Rate High Risk Loan, which is a subprime loan, if the person does not believe at the time the loan is consummated that the borrower is able to make the scheduled payments. The determination of a borrower's reasonable ability to repay a subprime mortgage loan must include consideration of the borrower's income, except that the creditor may not disregard facts that indicate that information submitted by the borrower is inaccurate or incomplete as detailed. The calculation of the ability to repay must:
  - Be based on fully amortized, fully indexed term.
  - Verification of income by tax return, payroll, 3<sup>rd</sup> party verification or reasonable alternatives, or
- Ø For loans which may have negative amortization, the analysis must include any balance increase that may accrue.
- Ø No prepayment penalties, flipping, encouragement of default or accrued interest after default, are allowed.
- Ø Payments to contractors must be payable to the borrower or by a joint instrument to the contractor or borrower.
- Ø No Loan may provide terms under which the balance may increase at any time over the course of the loan, because the regular periodic payments do not cover the full amount of the interest due.

- Ø Late payment fees for High Risk Loans may not exceed 5% payable when the loan is past due for ten days or more.
- Ø No more than two periodic payments may be consolidated and paid in advance from the loan proceeds, and no payments can exceed twice the average scheduled payment
- Ø High Risk Loans may not be made unless a prescribed notice has been given to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under Regulation Z 226.31 (Section 32 Loans.)
- Ø A lender must receive certification of counseling from an approved agency on the advisability of the loan.
- Ø A lender must include the following note on the documents that creates the debt or pledge of security, the following notice;

**NOTICE:** This is a High-Rate, High-Fee Mortgage subject to special rules under state law. Purchasers or assignees of this High-Rate, High-Fee Mortgage may be liable for all claims and defenses by the borrower with respect to the High-Rate, High-Fee Mortgage

## **MINNESOTA**

### **Sub-prime Lending**

As we have been reporting, the Minnesota Legislature passed two bills, House Bill 1004 and Senate Bill 988. The stated purpose is to protect people from alleged predatory lending practices. The changes are effective **August 1, 2007**. Minnesota has published a compliance list summarizing these changes for those of you doing business in the state. The “Alert” should be required reading for those of you doing business in Minnesota. It can be found at the Minnesota Department of Commerce site at [www.state.mn.us](http://www.state.mn.us) (See Frequently Asked Questions for Mortgage Originators and Servicers.)

## **NEVADA**

Assembly Bill 440 has become law in the state of Nevada. The text of this bill can be found under [www.leg.state.nv.us](http://www.leg.state.nv.us). (Please go to *Session Information* and then to *2007 Session*, then to *Bill Information* and then to *Assembly Bills*). The law now defines an unfair lending practice to include among the previously defined practices, knowingly or intentionally making a home loan other than a reverse mortgage, including without limitation a low document loan, a no document home loan or a stated document home loan, without determining, using any commercially reasonable means or mechanism, that the borrower has the ability to repay the loan. The statute specifically defines no document home loans and stated document home loan, but does not define the term “commercially reasonable means or mechanism”.

Nevada law is also amended to add a new Section defining certain types of mortgage fraud and making them a crime. Among the defined categories are:

- Ø knowingly making a false statement or representation concerning a material fact,
- Ø knowingly using, or facilitating the use of, a false statement or misrepresentation made by another person concerning a material fact,
- Ø receiving proceeds or other money in connection with the mortgage lending transaction, that the person knows resulted from either of the foregoing misrepresentations,

- Ø conspiring with another person to violate any of the restrictions contained in the first two sections, and
- Ø file, or cause to be filed with the county recorder, any document that the person knows to include a misstatement, misrepresentation, or omission concerning a material fact.

The law also defines and then regulates the concept of “foreclosure consultant”. The term is not generally recognized but the concept is present in a few other states such a California. If a lender falls within this definition, its conduct is significantly regulated. A number of exemptions exist. Punishment for violating these new provisions includes civil and criminal penalties. In addition, rights of rescission exist for any purchases that occur in violation of these provisions.

### **Mortgage Broker and Mortgage Agent Licensing Requirements**

Assembly Bill 375 was signed by the Governor in June 2007. The Bill provides a number of technical changes to the regulations governing mortgage brokers or mortgage agents:

- Ø Brokers and Agents must now complete education on mortgage lending and successfully pass a written examination.
- Ø If a mortgage broker is not a natural person, the applicant must designate a natural person as a qualified employee to meet these requirements.
- Ø The Division of Finance will approve regulations regarding qualified employees specifying duties, continuing education and other requirements.
- Ø The law also now establishes the Commissioner’s responsibilities to establish regulations setting forth requirements for an investor to acquire ownership of or beneficial interest in the loan secured by a lien on real property, including minimal financial conditions that the investor must comply with before becoming an investor.

**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](http://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**

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**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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