LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612

Mailing Address:
P.O. BOX 4125
IDY, CA 92549-4125

DAVID JEROME ALT
Attorney at Law
David.j.alt@altandassociates.com

TELEPHONE 949.253.5755
FACSIMILE 949.253.5756
www.altandassociates.com

July 2009

The purpose of the Lenders Update is to provide a "heads-up" of new legislation and other issues 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 reference, the applicable matter can be easily identified in the summary, and, where possible, a link is provided.

The Update includes information available to Alt & Associates as of July 24, 2009

FEDERAL ISSUES

PROPOSED AMENDMENTS TO THE TRUTH IN LENDING ACT

As we discussed in our last supplement, the Federal Reserve Board has just published its proposed changes to Reg Z for Closed End Mortgages and Home Equity Lines of Credit (HELOCs). Comments can be made on these proposals for 120 days.

If you would like to know "the devil in the details" please go to the Federal Reserve Announcement at www.federalreserve.gov/newsevents/press/bcreg/20090723a.htm.

Since the time of the announcement, most of the questions with which we have dealt have concerned the announcement that the proposed rule in its current form would prohibit payments to a mortgage broker or loan officer, that are "…based on a loan's interest rate or other terms." Does this prohibit Yield Spread Premiums? The answer may lie in the proposed amendments, which can be accessed at the link provided above. From a review of Subdivision E of the proposal, it would appear the Fed is leaning toward prohibiting Yield Spread Premiums to brokers and perhaps to other originators. However, the issue may be still open. The Federal Reserve staff recommends that the Federal Reserve solicit comments on alternatives that would

"allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today".

Among other provisions of the proposals, this suggestion is sure to provoke intense lobbying and discussion. At this time, the proposals are is clearly not etched in stone. If adopted the final version of the amendments will probably not become effective until well into 2010.

STATE ISSUES

CALIFORNIA

Civil Code changes affecting Mortgage Lenders in California.

We have discussed California SB 1137 in previous issues of Lenders Update. This bill became effective on the 8th of this month. The California Department of Corporations website has an excellent summary of many facets of SB 1137. If you are interested, please go to:

www.corp.ca.gov/FSD/default@asp and click on "Changes".

As you may recall, SB1137 requires a lender or servicer to attempt contact with a borrower prior to filing a default notice and specifies the terms and requirements of this contact. The statute also requires that a declaration regarding contact with the borrower be provided in a Notice of Default filing, that indicates that the mortgagee has contacted the borrower or attempted to do so. Notice to the current residents of the property also must be provided according to the terms of the statute and must be written in English, Spanish, Chinese, Tagalog, Vietnamese and Korean. Finally, after acquiring a property, SB 1137 requires the new owner to maintain the property. Failure to do so can result in penalties of up to $1000 per day.

The DOC summary provides an excellent reminder of the new duties incumbent on the note holder/servicer, before, during and after the foreclosure process.

NEVADA

At the close of its session at the end of May, the Nevada legislature passed a number of statutes regarding mortgage lending and escrow companies. These statutes include A133, A144, A152, A287, A486 and A513. The new statutes can be found at:

http://leg.state.nv.us/
Session information
2009 Session
Bill information
Assembly Bill

Two bills are of particular note:

- Assembly Bill 152 requires the Commissioner of Mortgage Lending to adopt regulations to license persons who perform services for compensation as foreclosure consultants or as loan modification consultants. The specifics of the license process and the requirements now imposed on these persons, are detailed in this legislation.

- Assembly Bill 287 relates to appraisals of real estate. It many respects it mirrors the requirements of California law and the HVCC adopted by FANNIE MAE and FREDDY MAC. It prohibits improper influence of an appraisal. The restrictions and prohibitions of the bill apply to real estate brokers, mortgage brokers, appraisers and mortgage bankers. This stature also enlarges the scope of conduct which is considered unprofessional for an appraiser. Finally, it provides for the registration and regulation of appraisal management companies in the State of Nevada.

NEW YORK

Supreme Court decision on Federal Preemption is delivered.

For some time now, we have been tracking the case of Cuomo vs. The Clearing House Association et al which lately has been awaiting a decision by the U.S. Supreme Court. On June 29, 2009 the Supreme Court issued its decision. The question decided concerned a regulation issued by the Comptroller of the Currency which preempted state "Fair Lending" laws as they apply to national banks. In a somewhat surprising decision, the Court ruled 5 to 4 in favor of the New York Attorney General. The Court distinguished between the OCC's monopoly on supervisorial powers and other issues of law enforcement where other agencies also have jurisdiction over banks. The majority felt that the OCC had overstepped its bounds under the National Bank Act.

The Court distinguished between a state's "visitorial powers" and its powers to enforce its law. The National Banking Act preempts only state laws affecting visitorial powers. Visitorial powers according to the Court's majority of 5, include examinations, inspections, or review of books and records of national banks. However, when a State Attorney General brings a suit to enforce its state laws, the AG is acting, not as a supervisor of a bank but rather as a law enforcer. Such an action is not considered the exercise of visitorial powers. As the Court stated in its opinion, the law has long recognized that the state laws may have effect over banks. An Attorney General must have the ability to enforce these state laws.

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

sherry.edwards@altandassociates.com

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:

David J. Alt, Esq.
David.j.alt@altandassociates.com

You may view previous issues on our website at
www.altandassociates.com