

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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Issue

All of us here at the firm extend our wishes for a great summer. We hope you get some time to just relax.

We are reporting on a number of new matters in Alaska, Connecticut, Illinois, Maryland, New Hampshire, New Jersey and Tennessee. Of particular interest is Illinois, which has introduced emergency loan originators registration requirements. Also, an Illinois appellate court has found that the Illinois Interest Act is not preempted by federal law, which raises a number of interesting questions to those of you who lend in Illinois.

HAVE A WONDERFUL SUMMER.

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 June 15, 2004

FEDERAL ISSUES

THE FTC AND SPAM

On June 15 the Federal Trade Commission announced that a "do-not-e-mail" list would not happen. The chairman of the FTC, Timothy Muris, stated that while the "do-not-call" list was a great solution to unwanted telephone solicitations, it is not the solution for e-mails. The FTC suggested that the most effective way to crack down on unwanted traffic might be to create new technology to verify that a message was sent from the address claiming to be the sender. This position is apparently strongly supported by the large internet services. The FTC at this time wishes to defer to these providers to develop the standards and methodology.

STATE ISSUES

CONNECTICUT

Connecticut SB 157 took effect **May 21, 2004** and serves to regulate the use of “mortgage rate lock-ins” by mortgage lenders and brokers.

The Act prohibits any mortgage lender from committing to make a first mortgage loan at a specified rate if the loan is closed by the expiration of a specified period of time, unless the mortgage lender issues a mortgage rate lock-in.

The Act further prohibits any mortgage broker from collecting a rate lock-in fee or issuing a mortgage rate lock-in, unless the fee is required by a governmental agency or is collected for, and paid to, the mortgage lender.

NEW HAMPSHIRE

New Hampshire HB 1320 becomes effective **July 23, 2004** and makes these changes to the states regulatory scheme for mortgage lending:

- é Licensees that service first mortgage home loans must, within 5 days of receipt of a written request, provide a net payoff amount as of a specific date with a daily interest rate charge.

- é Applicants for a second mortgage home loan lender license must either provide proof of a minimum of \$25,000 cash available, or may post a continuous surety bond in the amount of \$25,000.

- é Finally, each licensee must file an annual report on or before February 1 of each year, and an audited or certified financial statement within 90 days from the date of its fiscal year end.

NEW JERSEY

New Jersey AB 2052 takes effect **November 11, 2004** and applies to any person engaging in home improvement contracts within the state, including persons whose residence or principal place of business is located outside of New Jersey.

This Act prohibits any person from offering to perform, engaging, or attempting to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs.

The Act requires registrants to display their registration numbers as well as secure general liability insurance.

The Act also requires registrants to display certain disclosures and consumer information on invoices, contracts and correspondence.

ALASKA

Alaska HB 15 becomes effective **July 1, 2004** and places restrictions on telephone solicitation.

The Act prohibits telephone solicitation of certain people, including those on the federal do-no-call list and those identified in a phone directory as not wishing to receive phone solicitations, and

provides exceptions to these restrictions, such as charitable and political solicitations. The Act also requires telephone solicitors to register with the state prior to beginning the solicitation campaign and restricts telephone solicitors from stating or implying that they have an endorsement from the state.

Licensed real estate brokers, associate real estate brokers, or real estate salespersons acting in a capacity covered by the license, are exempt from the provisions of this Act.

TENNESSEE

Tennessee SB 3455 becomes effective **January 1, 2005** and requires mortgage lenders to have a managing principal and branch managers. The new law also regulates mortgage loan originators.

The Act requires each licensed mortgage lender to have a managing principal and further requires each office of a mortgage lender to have a manager.

The Act specifies that each mortgage lender must file a form indicating the business's designation of managing principal and manager for each branch. Each mortgage lender must also provide written notification within 14 business days of any change in its managing principal or branch manager.

Further, before an individual may provide services as a mortgage loan originator for a lender, that individual must be registered in affiliation with that lender. A mortgage loan originator may not be concurrently registered in affiliation with more than one.

A lender must ensure that each application for a mortgage loan contains the name and license number or registration number of the lender as well as the name, signature, and registration number of the mortgage loan originator.

MARYLAND

Maryland HB 1447 becomes effective **October 1, 2004** and provides restrictions on lenders regarding property insurance.

The Act prohibits a lender from requiring a borrower, as a condition to receiving or maintaining a loan secured by a first mortgage or deed of trust, to provide or purchase property insurance coverage or flood insurance coverage in an amount exceeding the replacement value of the improvements on the real property.

The Act further prohibits a lender from requiring that insurance be purchased through a particular insurance producer or insurance company.

ILLINOIS

ILLINOIS INTEREST RATE ACT

Since it was enacted in its current form, the Illinois Interest Act has been thought by some to be preempted by the federal Depository Institutions Deregulation and Monetary Control Act of 1980

(DIDMCA), or the federal Alternative Mortgage Transaction Parity Act of 1982. If so, the Interest Act would be unenforceable.

The Illinois Appellate Court in the case of U.S. Bank National Association v. Michael Clark et al. (2004), was forced to consider this question. It found the Interest Act was not preempted by these federal statutes.

Because the Interest Rate was believed to be preempted, questions concerning it have not been adequately addressed. The statute is ambiguous at best, and silent as to some issues. See the following:

Section 4.1a of the Interest Act provides in part:

The percentage of the principal amount of the loan represented by all of such charges shall first be computed, which in the case of a loan with an interest rate in excess of 8% per annum secured by residential real estate,, shall not exceed 3% of such principal amount. 815 ILCS 205/4.1a(f) (West 2000).

Now, because this law appears to be effective, lenders and investors have to deal with unresolved issues without any clear guidance from the language quoted above or other sources. When does the 3% cap become operative? Are broker fees to be included as charges? When does an adjustable rate mortgage exceed 8%? For adjustables, do we look at start rate or maximum rate? Lenders will have to make their best judgment as to these questions until guidance is received.

Consult your local attorney or soothsayer.

ILLINOIS LOAN ORIGINATORS

Illinois has issued emergency amendments to the regulations implementing the Residential Mortgage License Act of 1987. The amendments require registration of all persons engaged in the activity of a loan originator of residential mortgage loans as of **July 1, 2004**.

No person may act or assume to act as a loan originator, or employ any person to act or assume to act as a loan originator after June 30, 2004 unless the person is registered as a loan originator.

PREDATORY LENDING

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.

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