

# 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 or cases can be easily identified in the summary. Our Update includes changes in legislation available to Alt & Associates by June 15, 2005*

## NATIONAL ISSUES

### DEALING WITH BORROWERS IN FORECLOSURE

Often ignored in California, are laws which concern persons who purchase residences which are in foreclosure. California Civil Code 1695 defines an “Equity Purchaser” as any person who acquires Title to a residence in foreclosure. Exceptions include, persons who acquire Title for use as their residence or persons acquiring Title by Deed in lieu of foreclosure. In addition, California has regulated Mortgage Foreclosure Consultants. A “Foreclosure Consultant” means any person who makes any offer or performs any service on behalf of a borrower to do any number of things including stopping or postponing the foreclosure sale, obtaining any forbearance from any beneficiary or mortgage, or assisting the owner to obtain a loan or advance of funds. There are several exemptions, under specific conditions, from coverage for Department of Real Estate Licensees, Consumer Finance Lenders licensed by the Department of Corporations, or Residential Mortgage Lenders also licensed by the Department of Corporation.

Whether an Equity Purchaser or Foreclosure Consultant, these entities are significantly regulated and restricted by the provisions of California law. Certain disclosures are also required and rescission rights are prescribed along with those otherwise required for law. These laws represent a time bomb for the unwary.

Now, two additional states have moved to regulate similar conduct. In the last month, Colorado has enacted Senate Bill 71. The new statute regulates agreements offered to a homeowner in connection with foreclosure of its residence. It sets forth deceptive and unconscionable business practices and requires additional disclosures. The law is similar to that of California. In Illinois Senate Bill 2349 creates the Mortgage Rescue Fraud Act. Again, this statute outlines terms that must be contained in a consultant contract or property conveyance contract, including certain

terms under which contracts are void, the requirements for new disclosures and strict penalties for violation of the law.

In a market in which lenders are looking for any new business opportunity, we have seen numerous lenders proceeding with this type of business without knowledge of, or research into, restrictions which may be imposed upon them. We obviously recommend research and care.

## STATE ISSUES

### **COLORADO**

On **June 2, 2006**, Colorado Governor, Bill Owens signed House Bill 06-1161 which will require all individual loan originators who negotiate or originate a loan for a broker, to be registered in order to do business in Colorado. Each person affected by this law must be registered by **January 1, 2007**.

The new law only regulates people and not companies. It applies to all people who, for a fee, negotiate or originate a loan on behalf of a borrower. Each person who brokers mortgage loans must be registered and obtain a \$25,000 surety bond. Subsequently, the applicant must re-register every three years.

This House Bill provides certain exemptions for a person who:

- Is an employee of the Federal government or Colorado State government;
- Is an owner of real property who offers credit secured by a mortgage on the property sold;
- Is an employee of a bank, savings and loan association or industrial loan company;
- Works exclusively for an FHA-approved mortgagee; or
- A person who:
  - Funds residential mortgage loans originated and processed by a registered person or exempt person;
  - Does not solicit borrowers in Colorado; and
  - Does not participate in the negotiation or residential mortgage loans with the borrower, except for setting the terms under which the loan may be bought or funded.

Currently, the requirements to register are as follows:

- The fee for registering is not currently set, however, according to the bill, it is not to exceed \$200.
- A personal surety bond of \$25,000 must be maintained; and
- Fingerprint cards must be submitted;

The form for registering is not currently available. Once a registration application is submitted, Colorado estimates that it will take at least 16 weeks to complete the process. Colorado Mortgage Lenders Association suggests mortgage brokers consider **September 1, 2006** as their deadline to submit applications in order to be registered by **January 1, 2007**.

### **IOWA**

Effective **July 1, 2006**, Iowa created rules to implement Iowa law which requires registration of persons wishing to act as mortgage bankers or brokers.

A Mortgage Banker is defined as a person who makes, originates, sells, or services at least 4 First Mortgage Loans on residential real property. A mortgage broker is defined as a person who arranges or negotiates at least 4 First Mortgage Loans.

An application to operate as a mortgage banker or mortgage broker must be accompanied by a \$500 application fee. Any changes to the information provided on the initial application must be updated within 10 days of the change. The application fee for a mortgage broker is \$200 and the fee for a mortgage banker is \$400.

Natural persons who act as a mortgage banker or broker must register with the Iowa Division of Banks. This person must register even if they are employed by an Iowa Licensee. In order to register, the person must submit an application accompanied by a fee of \$50.00. In addition, the applicant must submit to a criminal background check. Renewal for natural persons must be submitted before expiration. Any individual who fails to renew before the expiration is not allowed to act as a mortgage banker or broker in Iowa.

An individual registration will be considered in unattached status at any time the individual registrant is not employed by or under contract with a licensee. An individual registrant who is in an unattached status may not act as a mortgage banker or broker in Iowa unless he/she is employed by, under contract with, or an exclusive agent of, a licensee.

Each individual registrant must complete at least 12 hours of approved continuing education as a condition of registration renewal.

## **OKLAHOMA**

The Governor of Oklahoma signed Senate Bill 1877 into law on **May 17, 2006**. The Bill relates to the Mortgage Broker Licensure Act. The Bill is the first in the series of changes to Oklahoma law relative to mortgage lending. A number of others will be summarized in the next Lenders Update. This statute now incorporates Federal Law into Oklahoma Law, including the disclosure requirements of RESPA and its implementing Regulation X. The new statute also imposes continuing education requirements upon mortgage loan originators similar to those required for Mortgage Brokers. Finally, the statute authorizes the Commission on Consumer Credit to adopt rules for licensees consistent with RESPA and HUD's Regulation X.

## **TENNESSEE**

Effective **January 1, 2007**, Tennessee has enacted an anti-predatory lending bill called the "Tennessee Home Protection Act of 2006". This act imposes restrictions on creditors making Home Loans and High Cost Home Loans. Under this act, the term "creditors" include both lenders and mortgage brokers.

## **Home Loans**

A Home Loan is defined as any extension of credit when:

- The principal amount does not exceed the lesser of the FNMA conforming loan amount of \$250,000;
- Is not a residential mortgage transaction as defined by Regulation Z;
- Is not a reverse mortgage transaction;
- Is not an open-end credit loan;
- Is a federally related mortgage loan;
- Is not a construction loan; and
- Is not guaranteed by HUD, VA, Tennessee Housing Development Agency or the U.S. Department of Agriculture.

### **High Cost Home Loans**

High Cost Home Loans are defined as a Home Loan (see above), which exceeds one of two thresholds:

First, the annual percentage rate at consummation of the transaction will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15<sup>th</sup> day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

Second, the total points and fees are 8% for Home Loans of \$30,000 or less and for Home Loans of more than \$30,000, it is the greater of (a) 5% of the total loan amount; or (b) \$2,400.

The following disclosure must be made to the borrower 3 days before consummation of the transaction, in at least 12 point bold type, acknowledged in writing and signed by the borrower:

**“NOTICE TO BORROWER YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON WHICH LENDER OR BROKER YOU SELECT. IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN. YOU SHOULD CONSULT A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCE FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) MAINTAINS A LIST OF CREDIT COUNSELORS IN YOUR AREA. YOU MAY OBTAIN HUD’S LIST OF CREDIT COUNSELORS BY CONTACTING HUD DIRECTLY OR BY CONTACTING THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS. YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER’S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES. ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS.**

YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING LENDERS.”

Prohibited Acts and Practices for High Cost Home Loans:

- A Lender shall not recommend or encourage default on an existing loan or other debt in connection with the closing of a High Cost Home Loan that refinances all or a portion of that debt;
- A Lender shall not make a High Cost Home Loan that refinances within 30 months an existing home loan or High Cost Home Loan when the new loan does not have reasonable, tangible net benefit to the borrower.
- No Lender shall charge a fee to provide a release upon prepayment of a High Cost Home Loan except for the actual costs paid to record the release.
- No Lender shall finance any credit life, disability, unemployment or property insurance or other life or health insurance; and
- A loan cannot be made to a borrower unless a reasonable Lender 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.
- No Lender shall directly or indirectly finance any points or fees in excess of the greater of (a) 3% of the total loan amount or (b) \$1,500 if the total loan amount is more than \$30,000 or if the total loan amount is \$30,000 or less, than 5% of the total loan amount.
  - Points and Fees do not include 2 Bona Fide Loan Discount Points;
  - Points and Fees also do not include third party fees, including fees for title examination, title insurance, preparing loan documents, credit report fees, or appraisal fees, provided that these third party fees are reasonable and consistent with the fair market price of comparable services.
- Further, a Lender may not charge a borrower points and fees for a High Cost Home Loan if the proceeds of the High Cost Home Loan are used to refinance an existing High Cost Home Loan with the same Lender. This rule does not apply to Lenders who charge points and fees in connection with any additional proceeds received by the borrower due to refinancing the loan.
- Lenders cannot include a provision charging prepayment fees or penalties exceeding 2% of the loan amount prepaid in the first 24 months; No prepayment penalties are allowed in the refinancing of a High Cost Home Loan if the lender is the note holder of the loan being refinanced.
- Loan documents may not contain a scheduled payment that is more than 2x as large as the average of earlier scheduled payments;
- Lenders may not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan;
- A Lender cannot have a provision in the loan documents which allows the Lender, in its sole discretion to accelerate the indebtedness. This does not apply to acceleration due to default or a due-on-sale provision.
- Loan documents may not include terms under which more than 2 periodic payments are consolidated and paid in advance from the loan proceeds provided to the borrower;

- Loan documents may not contain a provision that increases the interest rate after default. This provision does not apply to variable rate loans;
- A Lender shall not impose late payment charges except as follows:
  - The late payment fee shall not be in excess of the greater of 5% of the amount of the payment past due or \$15.00.
  - The late payment fee cannot be assessed until the payment is 10 days past due.
  - The late payment fee shall not be imposed more than once to a single late payment and no late payment shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default.
- A Lender may not present to a borrower with a High Cost Home Loan at closing with a materially different interest rate, term, type of loan or settlement charges from the settlement charges disclosed on the last disclosures as required by RESPA without re-disclosing the terms not less than 1 day before closing. “Materially different settlement charges” are defined to mean the total settlement charges disclosed on the final settlement statement that would exceed the last disclosed charges by 15% or more in the aggregate.
- No Lender shall encourage or solicit any person to execute a loan agreement, mortgage, deed, deed of trust, loan application, settlement statement or other loan or closing document for a High Cost Home Loan if any of the material terms of the loan or transaction are omitted or incomplete.
- No person shall modify any loan agreement, mortgage, deed, deed of trust, loan application or other loan or closing document after the execution of such document, unless such modification is:
  - With the consent of the person(s) affected by the change;
  - The consent is in writing and
  - The change is authorized by a valid power of attorney.

In addition, Tennessee requires:

- Upon request, a Lender must provide within 5 days, 2 pay-off statements within any 12 month period to a borrower free of charge. The statements shall be valid for 15 days.
  - Lender may require the request be sent in writing, by fax or other electronic means with sufficient information to identify the loan, including the name of the borrower and the loan number
  - Lender may charge a reasonable fee for any additional pay-off requests.
- At least quarterly, the Lender or its Servicer must report both the favorable and unfavorable payment history information of the borrower to a nationally recognized consumer credit reporting agency.
- Each mortgage or deed of trust securing a High Cost Home Loan shall state on the face of the document: “This instrument secures a high-cost home loan as defined in Tennessee Code Annotated, Title 45.”
  - Further, each note must state on its face “This instrument is a high-cost home loan as defined in Tennessee Code Annotated, Title 45.”
- Before a High Cost Home Loan is made, the Lender must first provide to the borrower, in a separate document clearly identified, notice of available counselors from 3<sup>rd</sup> party nonprofit organization approved by HUD, or a housing financing agency of Tennessee. Generally this disclosure should be given when the GFE is given. The document must provide either:

- A list of counselors who are located in the county of the borrower or the nearest available county where counselors are available;
  - A resource list for HUD, Tennessee Housing & Development Agency or the Tennessee Department of Financial Institutions, including toll free numbers and website information.
- A High Cost Home Loan must be closed in the office of the Lender, the office of an attorney at law licensed to practice in Tennessee, office of a title company or the office of a settlement, closing agent or mortgage broker.

## **VIRGINIA**

Virginia has adopted Rules and Regulations numbered as BFI-2005-00012. The rules were announced in their final form on April 24, 2006 and will become effective on **September 1, 2006**.

They are available on the Commissioner's website at <http://www.scc.virginia.gov/caseinfo.htm>. The new rules prohibit misrepresentation by a licensee of qualifications for, or terms of, any mortgage loan. The rules proscribe the licensee from retaining any portion of any fees or charges imposed upon consumers for goods or services provided by third parties. Finally, the bond required of licensees must be maintained even though the person's license is withdrawn or denied, surrendered, suspended or revoked or the licensee ceases to engage in business.

The mortgage lender or mortgage broker now has affirmative reporting requirements within fifteen days of the occurrence of numerous events such as bankruptcy or other revocation or suspension of any other license or of any other enforcement action. The licensee must also report the surrender of any license in another state because of threatened enforcement action, the denial of a license application in another state, or the indictment of any employee/officer/director or principal for a felony. Licensees will now be prohibited from advertising that the consumer has been pre-approved for a mortgage loan unless detailed disclosure is provided as to the terms of this "approval". Finally the new rules and regulations set out detailed conditions and disclosures concerning commitment agreements and lock-on agreements and the content of advertisements.

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**Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at [www.altandassociates.com](http://www.altandassociates.com)**

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