

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 June 17, 2007

STATE ISSUES

COLORADO LEGISLATION:

This month, because of the quantity and significance of new legislation which will become law in the state of Colorado, we felt it advisable to address the entire issue of this Update to this subject. We will summarize the statutes, hitting what we believe to be the most significant areas. As always, we would suggest reviewing this legislation in detail if you are operating in Colorado.

Senate Bill 85:

S.B. 85 deals primarily with a number of real estate issues, both substantive and technical. Perhaps of greatest interest is the portion of the new statute which now provides that it is prohibited in Colorado to influence a real estate appraisal. Specifically, a broker shall not directly or indirectly, compensate, coerce or intimidate an appraiser or attempt directly or indirectly to compensate, coerce or intimidate an appraiser for the purpose of influencing the judgment of the appraiser with respect to the value of a dwelling offered as security for a mortgage loan.

This does not prohibit a mortgage broker from requesting an appraiser to:

- Ø Consider additional, appropriate property information,
- Ø Provide detail, substantiation, or explanation for the appraiser’s value conclusion, or
- Ø Correct errors in the appraisal report.

It will now also be considered a deceptive trade practice:

- Ø To knowingly submit a false or misleading appraisal in connection with a dwelling offered as security for a mortgage loan,

- Ø Compensating, coercing or intimidating an appraiser for the purpose of influencing that appraiser's independent judgment.

Senate Bill 203

S.B 203 concerns the regulation of persons brokering mortgage loan transactions who, up until this time, have been referred to in Colorado as loan originators/brokers. The bill also sets out prohibited acts and grounds for discipline.

As most of you undoubtedly remember, Colorado law was recently amended to require the registration of individual mortgage brokers. This now has been changed from a registration procedure to a licensing requirement. Mortgage Brokers, who registered under the predecessor to the new law, must, before **January 1, 2008**, have his/her registration converted to a license upon satisfaction of all initial licensing requirements not already satisfied when applying for the registration.

Any applicant for a new license after **January 1, 2009**, must have satisfactorily completed, within the three years preceding the date of the application, a Mortgage Lending Fundamentals course of at least nine hours of classroom instruction. In addition the applicant shall have satisfactorily completed a written examination.

Finally, after **January 1, 2009**, Colorado may require continuing education of licensees. This continuing education will not require more than nine credit hours in the previous three year period.

Licensed mortgage brokers will be able to hire unlicensed mortgage brokers under temporary licenses. This requires that the unlicensed person initiate an application process.

Perhaps the most interesting and unique of the many provisions of this statute is the requirement that every licensee must obtain Errors and Omissions insurance to cover brokerage activities. Colorado regulators will determine the terms and conditions of this coverage including the minimum limits of coverage, permissible deductible and exemptions.

Senate Bill 216

S.B. 216 incorporates federal interagency guidance into Colorado law. It requires the Banking Board to adopt rules governing the marketing of nontraditional mortgages institutions, by incorporating appropriate provisions of the Final Interagency Guidance on Nontraditional Mortgage Products released on **September 29, 2006** by the joint federal agencies.

The statute also provides that a mortgage broker has a duty of good faith and fair dealing in all communications and transactions with a borrower, which duties include but are not limited to:

- Ø The duty to not induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all the circumstances.
- Ø The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other information known to the mortgage broker and after making such inquiry to make his or her best efforts to

recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower.

- Ø The duty not to commit any unconscionable act or practice as otherwise proscribed in Colorado law.

State regulators may adopt rules defining what constitutes a reasonable, tangible net worth to the borrower.

Some conduct now prohibited include:

- Ø Engaging in a pattern or practice of providing residential mortgage loans to consumers based predominantly on acquisition, foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay a loan,
- Ø flipping a residential mortgage loan, and
- Ø entering into a residential mortgage loan knowing there is no reasonable probability of repayment.

Senate Bill 249

S.B. 249 provides for an assessment of Title Companies for the purpose of providing adequate funds for market analysis, investigation and enforcement of rules regulating title insurers.

House Bill 1322

H.B. 1322 supplements and amplifies upon many of the provisions contained in these Senate Bills referenced above.

Again, to hit several of the statute's significant aspects, the new House Bill significantly regulates contracts between brokers and borrowers and fees paid by borrowers:

- Ø First, a mortgage broker must pay a third party provider for its services, no later than thirty days after recording the loan, or ninety days after the completion of the third party service, whichever comes first, unless otherwise agreed or unless the third party service provider has been notified in writing that a dispute exists regarding the service.
- Ø The law also requires that all contracts between a mortgage broker and borrower shall be in writing and contain the entire agreement of the parties.
- Ø The law requires written disclosure of fees and costs and regulates lock-in agreement terms. If these fees and costs are changed, it provides detailed rules for situations in which the amount of the original disclosed fees are changed. Additional disclosures regarding the change in fees must be provided and must occur no less than three business days prior to the signing or the loan closing documents.
- Ø Finally, H.B. 1322 provides regulation when real estate brokers also act as loan originators. In addition to other specific requirements, mortgage brokers shall make a full and fair disclosure to the borrower of the relationship and the nature of the loan product and transaction.

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

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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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