

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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NEW DEVELOPMENTS

ARM PREEMPTION REDUCED

Some of you may not have known this, but you may have been originating your Adjustable Rate Mortgages under the rules of the Office of Thrift Supervision. This began in 1982, when Congress passed the Alternative Mortgage Transactions Parity Act (“Act”). The purpose of the Act was to give creditors who were not federally chartered, the opportunity to make alternative mortgage transactions without regard to state law restrictions. Alternative mortgage transactions (“AMTs”) include adjustable interest rate loans, loans with balloon payments and other non-traditional transactions.

In California many of these requirements for AMTs can be found in Sections 1916 through 1921 of the California Civil Code. However, these sections did not have to be adhered to if a lender chose to make loans under the authority of the Act.

The Act allowed states to opt-out of its provisions. Few did and only Arizona, Massachusetts, Maine, So. Carolina, New York and Wisconsin have taken advantage of the opt-out provision provided by the Parity Act.

Then along came the Dodd-Frank Wall Street Reform Act and the extent of this preemption has been narrowed. These changes will take effect on July 21, 2011.

The Parity Act has been amended to preempt only loans in which the interest rate may be adjusted or renegotiated. Other AMTs no longer fall within its scope.

The effect is a bit too technical for this brief summary. However, after July 21st a creditor who does not have a federal charter should review their AMT programs. In the event that the market once again functionally allows non-traditional loans, state laws, such as those in California that deal with balloon payments, shared appreciation or equity loans or other types of non-traditional products, will once again apply to many aspects of AMTs..

DEPARTMENT OF REAL ESTATE SUMMER BULLETIN
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For those of you who do not regularly monitor the California DRE website, the Department published its Summer Real Estate Bulletin on June, 23rd. The Bulletin can be found at: www.dre.ca.gov in the Menu items on the Home Page.

The Bulletin addresses these issues:

- It identifies a number of frequently asked questions regarding MLO license endorsement requirements. These include the online notification to DRE regarding residential loan mortgage activity. It specifically addresses when this notification should be made and when it should be terminated.
- Perhaps more importantly, the Bulletin addresses handling trust funds in an “electronic age” and the options available for electronic disbursements from such

funds. The article discusses who can disburse the funds, the policy and procedures that govern these disbursements, and the segregation of duties to prevent one person from committing a wrong doing and being in a position to conceal it.

We recommend both articles for your review.

NEW SAMPLE DISCLOSURE FORMS

As we noted, in May the new Consumer Financial Protection Bureau (CFPB) provided 2 sample forms to be potentially used to provide necessary loan disclosures. During the past 6 weeks, the CFPB has evaluated these forms through interviews and comment.

Today, June 27th, the CFPB published 2 new forms produced after this evaluation and as a result of interviews with consumers, lenders and other industry participants and after receiving almost 13, 000 comments. The CFPB is now asking for comments on these new exemplars. If you would like to see these forms for informational purposes or to participate in the comment process, (you have until Tuesday, July 5th for feedback) they can be found at:

www.consumerfinance.gov/knowbetc

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