

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

---

## ALT & ASSOCIATES

Tel: (949) 756-5250

Attorneys at Law

Fax: (949) 756-5270

e-mail:

18010 Skypark Circle, Suite 200

[david.j.alt@altandassociates.com](mailto:david.j.alt@altandassociates.com)

Irvine, California 92614

---

Volume XIV  
III

March 2007

Issue

---

*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 information available to Alt & Associates by March 21, 2007*

## FEDERAL ISSUES

### FEDERAL AGENCIES AND SUBPRIME MORTGAGE LENDERS

On March 2, 2007, the Federal Financial Regulatory Agencies issued a press release announcing that they issued a proposed statement on Subprime Mortgage Lending. The proposal is open to comment for a period of sixty days. The statement may be found at <http://www.fdic.gov/news/news/press/2007/pr07018a.html>. If the statement is adopted, which we can assume it will be, and the reaction is anything similar to the joint agencies statement on Alternative Mortgage Products, it is probable that a similar, if not identical, statement could be adopted by state regulators and FNMA and FHLMC. According to the agencies’ news release, the purpose of the Statement is to address certain risks and emerging issues relating “to subprime mortgage lending practices, specifically adjustable-rate mortgage (“ARM”) lending products”. The agencies express the concern that borrowers do not understand the risks and consequences of these loans and that they pose an elevated credit risk to financial institutions. The Statement continues by stating that the borrower’s repayment capacity should be evaluated particularly the borrower’s ability to repay the loan by its final maturity. The Statement is intended to compliment the 2006 Interagency Guidance on Nontraditional Mortgage Product Risks, which had not addressed these particular types of ARM products.

### GOOD NEWS – RESCISSION CLAIMS ARE NOT SUBJECT TO CLASS ACTION

At least according to the U.S. Court of Appeals for the First Circuit, class-action treatment cannot be given for claims for rescission of a mortgage loan under the Truth in Lending Act. The court, in its unanimous decision, further said the same would apply to claims for rescission made under TIL’s close cousin, the Massachusetts Consumer Credit Cost Disclosure Act. The case is

McKenna v. First Horizon Home Loan Corp., No. 06-8018 (1<sup>st</sup> Cir. Jan. 29, 2007). In brief, the court's reasoning was that Congress did not intend to allow class-action treatment for this type of claim. The court found that Congress had made clear that protection to consumers was a purpose of the Truth in Lending Act, but Congress did not intend that lenders face huge liability for minor violations.

## STATE ISSUES

### NONTRADITIONAL MORTGAGES

To follow up on our update above concerning the Joint Agencies announcements on Subprime Mortgage Lending, two more states have adopted rules relative to these or similar issues.

In **OREGON**, the Department of Consumer and Business Services adopted rules and best practices guidelines to increase supervision of non-traditional mortgage lending practices. Provisions of the rules include requirements for stringent education for mortgage professionals and requirements for supervision of mortgage lenders and originators. As part of their actions, the Department adopted the Nontraditional Mortgage Lending Guidelines adopted by other states. More information may be found at:

<http://www.cbs.state.or.us/dfcs/> (see: Hot Topics – Regulatory Guidance on Nontraditional Mortgage Products).

**NORTH CAROLINA**, on **March 13, 2007** formally adopted proposed Guidelines originally published on November 29, 2006, which addresses nontraditional mortgage products. To assist lenders and other interested parties with compliance, the Office of Commissioner of Banks has proposed updated examination procedures to ascertain compliance. These Guidelines can be found at [www.nccob.org](http://www.nccob.org) (see: Recent Events & More - Nontraditional Mortgage Guidance)

### PREDATORY LENDING

Two states have proposed legislation regarding predatory lending or are taking further action in this area.

**IOWA'S** Attorney General has proposed new statutes aimed at predatory lending to address some of the nontraditional loan products the industry is currently concerned with. It also would deal with additional issues that have been traditionally handled by anti-predatory lending legislation such as flipping loans, fabricating income and other practices. <http://iowaattorneygeneral.org> (see: Predatory Lending, for more information).

The **MONTANA** legislature is now dealing with House Bill No. 538 called the "Homeowner's Protection Act". Again, with some variation, this statute is a fairly traditional anti-predatory lending bill which in this case also deals with home equity lines of credit. If a loan is a "Covered Loan" and exceeds certain thresholds then other lending practices would be prohibited or restricted. Again, these include such things as financing credit insurance or flipping loans. [http://laws.leg.mt.gov/pls/laws07/law0203w\\$.startup](http://laws.leg.mt.gov/pls/laws07/law0203w$.startup) (see: Bill type and Number HB 538 – Find – Current Bill Text: HTML or PDF)

## **CALIFORNIA**

### **California Secretary of State Records Checks.**

On **March 21, 2007** the California Secretary of State announced that it had temporarily disabled its capability to perform online searches and orders. It took this action to prevent identity theft and protect the personal privacy of individuals filing with its office. The action apparently is directed at removing Social Security numbers from copies of all files and electronic images made available to the public. The information ends with a request that people not be put at risk of identity theft by including social security numbers on any documents for filing.

## **WEST VIRGINIA**

### **Residential Mortgage Lender, Broker and Servicer Act**

House Bill 2776 was signed into law by the Governor of West Virginia on **March 20, 2007**. The Act amends the Residential Mortgage Lender, Broker and Servicer Act to require certain licensees to license all loan originators and to allow the Banking Commissioner to enter into information sharing agreements with other mortgage regulators.

Now in West Virginia, a loan originator is an individual who on behalf of a licensed mortgage broker, under the direct supervision of that licensee, performs any of the services described in the statute's definition of a mortgage broker. The statute requires that all individual loan originators working on behalf of a lender or broker be licensed if the entity brokers the majority of its residential mortgage loans. This determination is based upon the most recent annual report filed with the Division. The new bill can be viewed at:

[http://www.legis.state.wv.us/Bill\\_Status/Bill\\_Status.cfm](http://www.legis.state.wv.us/Bill_Status/Bill_Status.cfm)

**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](http://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**

[susan.graaff@altandassociates.com](mailto:susan.graaff@altandassociates.com)

**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:**

**David J. Alt, Esq.**

[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)