

# 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 March 18, 2008.

## FEDERAL ISSUES

### PRICE STRUCTURE SURVIVES RESPA CHALLENGE

In a decision, which most RESPA watchers have enjoyed reading and we are sure some title companies are shaking their heads over, the 11<sup>th</sup> Circuit Court of Appeals handed down a unanimous decision on **January 22, 2008**. The case, *Krupa v. Landsafe, Inc., No. 07-10061* involved a challenge to an agreement between Countrywide Home Loans, Inc. and Landsafe Credit.

Essentially, the two companies agreed that both companies would use a pricing model in which Landsafe would charge for credit reports at a rate of \$35 for loans which were locked-in and charged nothing for reports for applicants who did not lock-in their rates. This seems rather similar to situations starting years ago, in which title companies did not charge for issuing title reports when the subject loan never closed.

The plaintiffs in the Class Action suit charged that the pricing policy violated RESPA in that it was a kick-back for the referral of business and a mark-up. The argument, in short, was that Countrywide was receiving a benefit by passing on all of its credit reporting fees to its customers in return for Countrywide’s referral of business to Landsafe.

The court disagreed with the plaintiffs and found that the policy did not violate RESPA. According to the 11<sup>th</sup> Circuit, Countrywide referred no more requests for credit reports to Landsafe than it had prior to this arrangement. Further, Landsafe made no further money as a result of the arrangement.

# STATE ISSUES

## CALIFORNIA

### DRE Spring Bulletin

The Department of Real Estate has issued its Spring Real Estate Bulletin. The Bulletin can be found under <http://www.dre.ca.gov> (click on What's New or the logo for Real Estate Bulletin)

As most California lenders know, the DRE publishes this Bulletin once every quarter. Generally there is useful information in it and in this case it contains an article by Truly Sughrue, Real Estate Counsel which discusses the difference between mortgage brokering in California under a DRE license and under California Finance Lenders license. We recommend the article to those of you who may be interested.

### Proposed Sub-Prime Lending Reform Act of 2008

Assembly member, Ted Lieu, has proposed a Sub-Prime Lending Reform Act of 2008, California A.B. 1830. As of our cut-off date, the Bill was in the Committee on Banking and Finance where it was referred on February 7, 2008. Assemblyman Lieu is Chairman of this Committee.

The Bill proposes several substantial measures to end what the Assemblyman refers to as "The Wild West excesses of the mortgage frenzy..." Some of these measures are;

- Ø a ban on Yield Spread Premiums,
- Ø a requirement for lenders to establish the borrowers ability to repay,
- Ø a ban on prepayment penalties,
- Ø a ban on negative amortization loans, and
- Ø credit counseling in circumstances where there are High-Cost Loans.

## DISTRICT OF COLUMBIA

### "Red Paper" Disclosure

The Council of the District of Columbia has enacted the Mortgage Disclosure Amendment Act of 2007. The statute became effective on **January 29, 2008**. It can be found at the following DC Council link: <http://www.dccouncil.washington.dc.us/lims/billrecord.asp?strlegno=B17-0167>

The Bill establishes a new disclosure for non-conventional mortgage loans which means any mortgage loan which is not a fixed rate mortgage loan with an amortization period of thirty (30) years or less. The Act establishes that an additional disclosure must be provided to the borrower for these loans and sets out the rather lengthy detail of the nature of the disclosure. We will not attempt to summarize it for purposes of this article, but as indicated, it is set out in almost complete form in the D.C. Act. The new information must be;

- Ø given to the borrower in a permanent form separate from other disclosures, either electronically or physically,
- Ø must be presented in a 12-point font in plain English or in the language of the mortgage lender's presentation to the borrower, and
- Ø IF GIVEN TO THE BORROWER ON A PHYSICAL PIECE OF PAPER, SHALL BE PRINTED ON A RED PIECE OF PAPER MEASURING 8.5 INCHES BY 11 INCHES.

One wonders the symbolism of the color red, whether all shades of red are allowed and whether the printing has to be in black or, could it be in other colors such as, pink.

## **MARYLAND**

### **Emergency Servicer Reporting Regulation**

The Maryland Commissioner of Financial Regulation has adopted an Emergency Servicer Reporting Regulation, COMAR 09.03.06.04B. The text of the statute can be found at: [www.dllr.state.md.us/mortgageservicer](http://www.dllr.state.md.us/mortgageservicer) The statute originally was to be effective and the first reports due on March 20, 2008. As of our cut-off date, the first reports now appear to be due **April 7, 2008.**

The regulation requires licensed servicers to compile and submit to the Commissioner, on or before the 20<sup>th</sup> day of each month, a report, in the form prescribed, which contains a number of data from the preceding month's operations:

- Ø The number of mortgage loans being serviced.
- Ø The number of mortgage loans in default.
- Ø Loss mitigation activities undertaken.
- Ø Number of foreclosure actions.
- Ø Certain information regarding adjustable rate mortgage loans.

This information is available in a public report.

## **WASHINGTON**

### **New Rules for Mortgage Brokers**

As we know, the State of Washington has enacted SB 6471 related to mortgage loan brokers in that state. The Washington Department of Financial Institutions has proposed new rules to implement this statute. The proposed rules can be found at:

<http://www.dfi.wa.gov/cs/rulemaking.htm#mortgage> (Click on Mortgage Broker Practice Act – WAC-208-660). If you click on the Amendment, you will see the entire rules with a “redline” of the changes or deletions to the rules.

Among the significant changes are;

- Ø A new limitation on the exemption from the Broker's Practices Act for Fannie Mae or Freddie Mac approved institutions. In brief, the exemption now will only apply to loans made by an approved lender, which are sold to those agencies, but not to any other loans. The lender must have a license to broker or make residential mortgage loans which are not sold to Fannie Mae or Freddie Mac in a “Net Branch” context.
- Ø The proposals also discuss the use of branch offices and the required participation and supervision by the licensed lender.
- Ø The proposed regulations detail new requirements for designated brokers including new financial, testing and education requirements.
- Ø New rules concerning loan originators are set forth including procedures through which a loan originator may work for more than one broker and other institution and testing requirements.
- Ø The proposal sets out requirements for disclosure of Yield Spread Premiums.

Any practitioner under a mortgage broker license and/or operating under an exemption from this license in Washington, should certainly review these proposed rules with care.

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*Please fill out the following short form and e-mail ([susan.graaff@altandassociates.com](mailto:susan.graaff@altandassociates.com)) it or fax (949-253-5756) it to us if you wish to add colleagues to our complimentary subscription list or wish to change your e-mail. We have included a “feed-back” space so that you may send comments or a suggested subject for the newsletter.*

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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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