

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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Volume XVI

March 2009

Issue III

The purpose of the Lenders Update is to provide a “heads-up” of new legislation and other issues affecting the mortgage lending industry. We provide summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new statute, regulation or other material in detail where it is relevant to them. For reference, the applicable matter can be easily identified in the summary, and, where possible, a link is provided.

The Update includes information available to Alt & Associates as of March 27, 2009.

NATIONAL MORTGAGE LICENCING SYSTEM

On January 2, 2008 the National Mortgage Licensing System, after several years of discussion and planning, went into operation. At that time, seven states signed up for the program. As of the date of this article, twenty two states are participating and the system anticipates thirty three states by the end of summer.

The S.A.F.E. Mortgage Lending Act which became law on July 30, 2008 incorporated the NMLS into the system by requiring Mortgage Loan Originators either to be Federally registered or be licensed through the system.

The NMLS has a website which can be found at www.stateregulatoryregistry.org/nmls. The site contains a list of the current states that are participating. The Conference of State Bank Supervisors (“CSBS”) which sponsored this system, anticipates that in addition to the states listed, Alaska, Alabama, DC, Maryland, North Dakota, Oklahoma, Puerto Rico, South Carolina, South Dakota, Tennessee and Virginia will be participating by the end of this year. Any compliance, regulatory or licensing people will find the site informative and helpful.

LIMITS ON CASH-OUT REFINANCING FOR HUD

On March 12, 2009 HUD issued Mortgagee Letter 2009-08. HUD announced that for case number assignments on or after April 1st of this year, the LTV of any cash-out refinance may not exceed 85 % of the appraisal. HUD's reasoning for this reduction is the continued deterioration in the housing market and its need to limit its own exposure. The reduction is on a temporary basis only, according to the FHA.

Underwriting or eligibility requirements for cash-out refinances include:

- If new subordinate financing is being provided by the mortgagee or other permitted entity, the LTV is limited to 85% of the FHA insured first and any junior liens.
- Subordinate financing which currently exists may remain in place but must be subordinate to the FHA first mortgage. The total indebtedness or combined LTV is not considered but the borrower must qualify for making the scheduled payments on all loans.
- A modification of the existing subordinate lien on the property, resulting in re-execution of loan documents, is not considered a new subordinate lien.
- The subject property must have been owned by the borrower for at least 12 months preceding the date of the loan application. If the property has been owned for less than 12 months the mortgage amount is limited to the lesser of 85% of the appraisal or 85% of the sales price when acquired.
- Borrowers who are delinquent or in arrears under the terms and conditions of their mortgage are not eligible for a cash-out refinance.
- A second appraisal is required on cash-out refinances exceeding \$417,000 which are located in a declining area. The letter references ML 2008-09 for further information.

TWO NEW CHANGES TO NEW CALIFORNIA LEGISLATION

California Senate Bill 1461

On July 1, 2009, California SB 1461 will become effective. This bill will require all real estate licensees to disclose their license numbers on all first contact materials and purchase contracts. The bill states that a licensee must use its identification number on purchase contracts, business cards, stationary, advertizing flyers and other materials designed to solicit the creation of a professional relationship between licensee and the consumer. This does not include advertisement in print, or electronic media and on For Sale signs. The DRE will be proposing regulations to implement and further augment this bill.

California Civil Code Section 1090.5

As we discussed in a prior Lenders Update, Fannie Mae and Freddy Mac have implemented Home Valuation Codes of Conduct as a result of litigation with the Attorney General of the State of New York. These will go into effect on May 1st of this year.

It might be helpful to remember that California Civil Code Section 1090.5 was enacted to address the similar problem of the improper influence of Real Estate appraisers. To quote from the statute, “no person with an interest in a Real Estate transaction involving an appraisal shall improperly influence or attempt to improperly influence through coercion, extortion or bribery, the development, reporting, result from or review of a Real Estate appraisal sought in connection with a mortgage loan.”

The California DRE working in conjunction with the Office of Real Estate Appraisers, the Department of Corporations and the Department of Financial Institutions has developed a list of practices which, in their judgment, constitute evidence of a violation of this law. Many of these conditions of violations are mirror images of those contained in the Fannie Mae/Freddy Mac Home Valuation Codes of Conduct. A few are:

1. withholding or threatening withholding of timely payment,
2. withholding or threatening to withhold business,
3. demoting or terminating an appraiser,
4. promising future business, promotions or other financial benefits or compensation,
5. conditioning business upon the receipt of a specified value,
6. requesting removal of language in the appraisal related to the physical condition, obsolescence or adverse property condition,
7. removing an appraiser from a list of qualified appraisers without written notice to the appraiser and evidence of the appraisers illegal conduct or substandard performance or unprofessional behavior, or
8. obtaining, using or paying for a second or subsequent appraisal or automated valuation model unless the original appraisal was reasonably believed to be flawed or tainted or the second appraisal is obtained pursuant to a pre-established policy of appraisal review or quality control.

It is not illegal however, according to the DRE, for a person to ask an appraiser to:

1. Consider additional appropriate property information, or
2. Provide further details, substantiation or explanation and/or correct objective factual errors in an appraisal report

A fuller description of these issues can be found in the Real Estate bulletin published by the California DRE for the Spring of 2009. It can be found at www.dre.ca.gov.

BITS AND PIECES

OHIO

Another Attorney General, in the State of Ohio initiated a series of actions to stop improper influencing of mortgage appraisers. The AG's office just announced a settlement with Frontier Appraisers. The allegation against Frontier is that it had sent appraisal request forms to licensed Ohio appraisers which listed a loan amount and estimated value. The Ohio Attorney General's office felt that this was an effort to try to persuade the appraiser to conform its valuation to these amounts.

NEW JERSEY

The State of New Jersey has enacted the Mortgage Stabilization and Relief Act and provides new restrictions and prohibitions on lenders and servicers who are foreclosing on homes and establishes an Assistance and Recovery Program.

First, the State will match up to \$25,000 in funding through a second mortgage on property (non-amortizing) to match the lender's contribution in an effort to reduce the mortgage payments on the first lien. The contribution of both the State and the borrower will be redeemed upon sale of the property. Second, the plan will help homeowners who face eminent foreclosure stay in their homes. They will pay an affordable rent until the homeowner is able to buy back the property. Support will be provided through the Housing Assistance and Recovery Program Support Fund.

Our monthly Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. 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, 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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