

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612

Mailing Address:
P.O. BOX 4125
IDY, CA 92549-4125

DAVID JEROME ALT
Attorney at Law
David.j.alt@altandassociates.com

TELEPHONE 949.253.5755
FACSIMILE 949.253.5756
www.altandassociates.com

March 2010 SUPPLEMENT

The purpose of the Lenders Update is to provide a “heads-up” of new legislation and regulations 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 convenience, 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 17, 2010.

NEW MORTGAGE LICENSING PROCEDURES FOR CALIFORNIA DRE LICENSEES

Earlier this month in our March 2010 Lenders Update, (available for your review at www.altandassociates.com) we published a summary of new mortgage licensing procedures in California for licensees under the California Residential Mortgage Lending Act (“CRMLA”) and the California Finance Lenders Law (“CFLL”).

In accord with these changes, the California Department of Real Estate (“DRE”) has implemented its own procedures and practices. This supplement is a summary of DRE

information, which can be primarily found on the DRE website at www.dre.ca.gov/lic_sb36_safe.html and is our attempt to provide a general framework of DRE procedures and systems. As with our previous DOC summary, we hope this will help the pieces fit together a bit more easily. [We have not repeated relevant portions of the original DOC summary.]

The Housing and Economic Activity Act of 2008 included in its provisions the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 or the SAFE Act. The Act was designed to provide consumer protection by providing minimum standards for licensing and registration of mortgage loan originators. The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators were encouraged to, and did, establish a Nationwide Mortgage Licensing System (NMLS). That system, as of January 1, 2010, has been implemented into California DRE law, regulations and procedures.

Definitions

For DRE licensing purposes, Mortgage Loan Originator (MLO) means:

An individual who takes a residential mortgage loan application or who offers or negotiates the terms of a residential mortgage loan for compensation or gain.

The definition excludes, among other situations, the following:

- An individual who performs purely administrative or clerical tasks on behalf of the mortgage loan originator, including receipt, collection and distribution of information common for the processing or underwriting of a loan, and communications with the consumer to obtain information necessary for processing or underwriting the loan
- Individuals who perform only real estate brokerage services
- Individuals solely involved in extensions of credit relating to timeshare plans
- A loan processor or underwriter who does not represent to the public that the individual will perform any of the activities of mortgage loan origination

Registration

As we have referenced previously in our Lenders Update, by January 31st of this year, or within 30 days of commencing the activity, all licensees must report to DRE, if they make, arrange or service loans secured by real property. This applies to both residential and commercial businesses. Fines of up to \$100 per day apply for failure to register. The registration can be completed online using form RE 866, Mortgage Loan Activity Notification.

Education

The SAFE Act requires MLO license applicants to complete 20 hours of pre-license education including Federal and State Law, Ethics and Non Traditional Mortgage Products.

The DRE has adopted a seemingly unique provision in California. Approval was granted to individuals currently licensed by DRE to obtain certification that the pre-license education requirement has been satisfied based on the education completed to obtain a DRE license.

Certification can be obtained as follows:

- The MU 4 which is the individual MLO license endorsement application, must be filed by August 31, 2010.
- DRE will submit a list of licensees who have an MU 4 pending to the NMLS
- When the NMLS receives the list, an email will be sent to applicants requesting them to log into the system and pay a processing fee of \$15.
- Upon receipt of the fee, the NMLS will advise DRE that the pre-license education requirements have been met.

In either case, pre-license education requirements do not have to be completed before taking the examinations. MLO applicants must pass this NMLS test which will include areas covering Federal and State Law on mortgage origination, Ethics and the law on fraud, consumer protection, nontraditional mortgages and fair lending issues. The test will

contain both Federal and California components. Applicants must achieve a score of at least 75% on each component. If requesting licensure in more than 1 state, the applicant must pass the unique state component in each of the states to which the applicant is applying.

If an applicant is unsuccessful, there is a mandatory 30 day waiting period after each of the first 3 attempts. After the 4th attempt, the waiting period becomes 180 days. Examinations can be scheduled through the NMLS with the initial registration step requiring no fee.

Filing

California DRE joined the NMLS effective March 1st of this year. There are electronic filing procedures depending upon the license type, and these include:

- Real Estate Broker License Endorsements
- Real Estate Corporation License Endorsements
- Real Estate Sales Person License Endorsements, and
- Real Estate Branch License Endorsements.

Fingerprinting

MLO applicants must submit a set of fingerprints. This set must be a new set, not the set required to be submitted at the time the DRE license was issued. Fingerprints can be obtained by linking to the NMLS Application and Fee Requirement Section. Applicants may then make arrangements to schedule an appointment to have prints taken using the live scan process which will be completed at specific locations established by the system. A \$39 fee will be charged when the criminal background check is authorized. The location for fingerprinting will be assigned to applicants based on their zip code. Fingerprints are automatically processed and the results reported back.

Prohibitions

As with DOC licensees, the SAFE Act prohibits the licensing of an MLO if any of the following conditions exist:

- **Convictions of a felony at any time, involving fraud, dishonesty, breach of trust or money laundering**
- **Conviction of a felony of any kind in the 7 year period prior to filing an application for endorsement**
- **Revocation of a prior loan originator license**
- **Demonstration of a lack of financial responsibility by showing disregard for his/her own financial condition. Financial condition will be established through the authorization of the NMLS to obtain a credit report from a consumer reporting agency as part of the online application process. The DRE indicates that the credit score will be obtained through a “soft pull” and therefore have no affect on the credit score.**

In addition, the DRE has published emergency regulations implementing SB 36 and under these new regulations, Section 2750.3, an applicant may be precluded from obtaining a mortgage loan originator license endorsement where his/her personal credit history includes:

- **“Any liens or judgments for fraud, misrepresentation, dishonest dealing and/or mishandling of trust funds”, or**
- **“Other liens or judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant”.**

Where an MLO applicant holds a restricted real estate license, the applicant, if applicable, must show a completion of restitution to any person who has suffered loss through the acts of the applicant.

These regulations are available at www.dre.ca.gov/gen_regs.html .

Again, we hope this summary has provided a helpful structure for understanding the DRE system. As stated above, our summary of the DOC system is available at our website at www.altandassociates.com .

Good luck to all of you.

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

sherry.edwards@altandassociates.com

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:

David J. Alt, Esq.

David.j.alt@altandassociates.com

You may view previous issues on our website at

www.altandassociates.com