

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

Irvine, California 92614

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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 or cases can be easily identified in the summary. Our Update includes changes in legislation available to Alt & Associates by May 15, 2005

NATIONAL ISSUES

FCC's NEW FAX RULE

In early May, the FCC published its final rule prohibiting unsolicited fax advertisements. The most interesting aspect of the new rule is the exception for existing business relationships.

The final rule provides that an unsolicited fax can be sent if the sender can show that there is a business relationship which exists or has existed. The sender must also demonstrate that the fax number was provided voluntarily.

An established business relationship is defined as “a prior or existing relationship formed by a voluntary two way communication between a person or entity and a business or residential subscriber with or without an exchange or consideration on the basis of an enquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party”. Where there is no existing business relationship, a fax can only be sent with the prior express consent or invitation obtained from the recipient before transmittal. This consent can be given in writing, orally or electronically.

Entities transmitting faxes must keep records showing the existence of the business relationship or the consent. The burden of proof will be on the sender to demonstrate compliance. In addition, the fax must contain a notice on its first page, which is clear and conspicuous, showing that the person receiving the fax may request that the sender not send future faxes. The new rules generally become effective **August 1, 2006**.

STATE ISSUES

CONNECTICUT

On **May 3, 2006**, Connecticut Senate Bill 228 became law. Generally, the new statute concerns mortgage practices and licensing procedures for loan originators. Of particular importance, are the changes which now prohibit mortgage lenders or brokers from collecting any fee or commission as a result of a potential borrower failing to consummate a loan, unless such fee or commission is considered an advance fee and subject to the requirements of Connecticut law. In addition, no mortgage broker can enter into an agreement, or require any person to pay a broker any fee or commission, upon prepayment of the principal of a first mortgage loan. Note that lenders are not included within this prohibition. This would seem to prohibit a side agreement between broker and borrower providing for a prepayment penalty, perhaps to offset a premium or fee rebate by the broker to its lender.

IDAHO

Idaho's Department of Finance, on **May 3, 2006**, approved as a final rule, regulations that affect licensed mortgage lenders and brokers. Below is a brief summary of the changes made by this regulation.

Education of Loan Originators and/or Person in Charge of Licensed Location

In order to obtain a license as a loan originator or managing person, an application must be completed and filed with a fee of \$200. Further, the Department of Finance also requires the applicant to maintain a surety bond in the amount of \$10,000.

Each licensed loan originator or managing person of a licensed location ("licensee") must obtain 16 credit hours of education within each reporting period. Each reporting period lasts for a period of 2 years starting November 1st immediately after being initially licensed or approved and ending on October 31st, two years later.

The Department of Finance requires each licensee to submit proof of continuing education when the reporting period is near expiration, accompanied by a fee of \$25.00, or within 30 days of completing a course by submitting a written application and fee of \$25.00.

Currently, there is no list of accredited course providers. However, Idaho does have a list of organizations which are presumptively accredited.

Written Disclosures

Changes were made to the written disclosure rule 50. The written disclosure rule specified what and when disclosures needed to be given to borrowers. The changes now have a more specific period of time when disclosures must be made. For example, the rule now states that disclosures must be made within 3 business days after receipt of the residential mortgage loan application. In the past the rule simply stated that disclosures needed to be made within three days after application.

Prohibited Practices

There were changes made to the Prohibited Practice rule 60 which prohibits certain practices by licensees. The changes now broaden the rule to include not only licensees but persons required to be licensed.

In addition, the borrower may now request from the licensee, either verbally or written, twenty four hours to review all the documents needed to be signed to close the transaction.

Finally, the change also added an additional action which is now prohibited by this rule. Licensees (and persons required to be licensed) cannot provide or offer to provide any services, such as credit repair, credit or debt counseling, investment advising, real estate brokerage services, tax, or legal advice, for a fee or gain unless the person offering these services has obtained an appropriate license or approval first.

KENTUCKY

On **April 21, 2005**, Kentucky House Bill 462 was enacted. The bill relates to mortgage banking and qualification for exemptions from licensing for mortgage loan companies or brokers. The bill covers a number of technical issues, however, of great significance are the changes to the exemptions granted to FHA approved institutions.

- The exemption will now only be available to HUD approved lenders who are approved to do business in Kentucky and any branch of such a mortgage loan company or mortgage loan broker approved by HUD to do business in Kentucky.
- An entity relying on such an exemption from licensing must fund or broker a minimum of twelve Federal Housing Administration-insured loans secured by Kentucky properties each year in order to maintain its exemption. Such a lender must notify Kentucky regulators within ten (10) days after ceasing to be approved by HUD.
- Further, a person relying on the exemption must provide a list of funded or brokered Federal Housing Administration-insured loans for the previous calendar year by January 15 of each year.
- Mortgage loan companies must now provide documentation of a funding source of at least \$1,000,000. This is up from \$500,000.
- Mortgage loan broker licensees shall have at least one owner who owns at least twenty percent (20%) of the company. That owner must have a minimum of two (2) years experience.
- Corporate surety bonds for mortgage loan companies or brokers will now be set at the rate of \$250,000 for loan companies and \$50,000 for brokers.

The practice note; check your licensing status in Kentucky. **This new law is a major change which could require previously exempt companies to obtain a Kentucky license.**

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
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

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