

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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Volume XV

May 2008

Issue

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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 it is relevant to them. 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 as of May 22, 2008.

NATIONAL ISSUES

New York Signs an Agreement Concerning Appraisals.

A number of regulators have been reviewing appraisal practices in their state. New York, however, is at the forefront and last November, Attorney General Coumo filed a lawsuit against eAppraiseIt and its parent company, First American. New York claimed the appraiser gave in to Washington Mutual’s pressure to inflate valuations on residences. Coumo followed the lawsuit by subpoenaing the records of Freddie Mac and Fannie Mae concerning the appraisals on loans purchased from WAMU.

While the lawsuit is still progressing, an agreement was announced between the two agencies and New York. Fannie Mae and Freddie Mac have agreed to cooperate in buying loans from banks only if the loans meet newly established guidelines.

The agreement establishes a “New Home Valuation Protection Code” which prohibits:

- Ø Lenders from using appraisal management companies that they control.

- Ø Mortgage brokers from selecting appraisers.
- Ø In-house staff appraisers who conduct initial appraisals.

The new standards are effective in **January 2009**. Lenders will have to represent and warrant to Fannie and Freddie that their appraisals are in accord with the new Code of Conduct. In addition, the Code establishes new requirements applicable to solicitations, selection, compensation and other areas of conflict of interest relative to appraisers.

STATE ISSUES

ILLINOIS

Predatory Lending Database

As we know, the Illinois Predatory Lending Database program will at last become effective on **July 1, 2008**.

In brief summary, new requirements will apply to all the applicable loans closed after that date. However, mortgage applications taken prior to that date, but closed after that date are exempt from the new provisions if a certificate of exemption is recorded along with the mortgage. The laws apply only to Cook County, not to other areas of Illinois. A property which is non-owner occupied, commercial property, residential property of more than four units, government property or reverse mortgages are exempt from the provisions of the Act.

As a guide to lenders, the Illinois Department of Financial and Professional Regulation has published a number of documents to aid in compliance. These documents can be found at: <http://www.idfpr.com/finlit101/sb1167.asp> These documents include a description of the program, class training schedules and registration notices for various types of institutions, such as banks and Illinois residential mortgage licensees.

We strongly recommend that you use this site if you do business in Illinois.

KENTUCKY

Mortgage Law Changes

Governor Steve Beshear of Kentucky signed House Bill 552 into law on **April 24, 2008**. This is another piece of state legislation which represents almost a sea change for mortgage companies. It affects mortgage loan lenders, brokers, originators, processors and exempt companies. Again, a significant amount of information can be found on the Kentucky Financial Institutions Website at: <http://www.kfi.ky.gov/industryinformation/hb552.htm>

A few of the changes are as follows:

- Ø The Kentucky Housing Commission may establish a Home-ownership Protection Center to provide home owners assistance to those who are in or near default.
- Ø Prescreened Trigger Lead Information is seriously restricted by the new requirements, some of which mirror federal law/regulation:

- The solicitation must disclaim affiliation with the initial lender/broker,
 - The solicitation must comply with federal law,
 - The solicitor may not contact consumers who have “opted out” or placed their name on the state or federal “do-not-call” registry, or
 - Terms cannot be offered with the knowledge that they will be subsequently changed to the consumer’s detriment.
- Ø All mortgage loan processors, including third party processors, must register with the Office of Financial Institution and satisfy prescribed education requirements.
- Ø Exemptions have been restricted and now apply only to:
- banks,
 - bank holding companies,
 - trust companies,
 - credit unions,
 - savings and loan associations,
 - service corporations,
 - subsidiaries of an S&L,
 - insurance companies,
 - real estate investment trusts, or
 - an institution of the farm credit system.

Affiliates of these organizations as well as affiliates of exempt consumer loan or finance companies or an industrial loan company, are no longer exempt.

- Ø Broker dealers and the de minimus category for persons making less than 5 loans a year are no longer exempt.
- Ø HUD exemptions are still allowed but companies must file for an exemption annually, which exemption expires on December 31.
- Ø Numerous technical changes have been added to the licensing process, including education requirements, fee amounts and licensing dates.
- Ø Prepayment penalties cannot be assessed against the borrower following the third anniversary of the mortgage or sixty days prior to the date of the first interest rate reset, whichever is less. Prepayment penalties further cannot exceed 3% for the first year, 2% for the second and 1% for the third.
- Ø Records must be maintained for five years 1) after the application is completed whether approved or rejected or, 2) after a mortgage loan is paid in full, whichever is longer.
- Ø Mortgage Brokers now have new duties including:
 - Exercise good faith and fair dealing.
 - Act in the best interest of the borrower and not compromise a borrower’s right or interest in favor of another.
 - Disclose to the borrower all material facts of which the mortgage and broker has knowledge that might reasonably affect the borrower.
 - Provide a written accounting to the borrower for all the borrower’s money and property received by the broker.

H.B. 552 also establishes the Kentucky Residential Mortgage Fraud Act with substantial new penalties relative to a violation of the provisions of that law including the creation of class C and

class D felonies for violations. Civil penalties have been increased to not less than \$1,000 or more than \$25,000 per violation.

The changes in the above represents only a brief summary of the changes enacted.

**WASHINGTON
Changes to the Mortgage Brokers Practices Act.**

As we have discussed in past Lenders Updates, Washington recently made significant changes to its regulatory scheme for Mortgage Brokers and in other areas of its law relative to mortgage lending. Perhaps most significant is the new prohibition which does not allow persons licensed under the Mortgage Broker Practices Act to make loans. The law becomes effective on **June 12, 2008**.

The Washington Department of Financial Institutions has published a number of helpful materials relative to these changes on its website at: www.dfi.wa.gov. The materials include applicable rules and procedures under Washington’s adoption of the Nationwide Mortgage Licensing System (NMLS). These materials became available to licensees on May 1, 2008.

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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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