

# 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](mailto:David.j.alt@altandassociates.com)

TELEPHONE 949.253.5755

FACSIMILE 949.253.5756

[www.altandassociates.com](http://www.altandassociates.com)

---

**Volume XVIII**

**May 2009**

**Issue V**

---

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 May 25, 2009.**

## CHANGES TO FEDERAL HOME MODIFICATION PROGRAM

As we know, the Making Home Affordable program has been in place for several months. Its success has been less than hoped for. However, the Administration has now announced new procedures to encourage participation in the HOPE for Homeowners program Treasury Secretary Geither announced that the intent is to open opportunities for more borrowers to avail themselves of the plan. The new amendments hope to encourage modification of second lien loans at the same time as the underlying first lien is modified. This will be accomplished through a corresponding reduction in payments on a second lien loan when a modification is initiated on a first lien. Servicers will also have the option of satisfying the second lien loan by a payment of a lump sum. The amount of the lump sum will be set by a formula to be determined by the Department of the Treasury.

Specifically, where the second lien is fully amortized, the interest rate on the second mortgage will be reduced to 1% and the second lien mortgage term will be extended to match that of the first lien. The amortization of the second lien will also be extended to match that of the first. In

addition, there will be a principal forbearance equal in proportion to that of any reduction of the first lien.

Subject to an interest rate cap, the second lien's interest rate will increase in five years time to the then current interest rate on the first mortgage. The amortization of the second lien will be adjusted to fully amortize at the higher interest rate.

On loans which are interest only, the rate will be reduced to 2%. Servicers, as well as reducing the interest rate, will again forbear principal in proportion to that of the first lien.

For both programs, the Department of the Treasury will share the cost of the interest rate reduction and investors will receive incentives based on ½ the difference between the interest rate on the first lien and 1 %.

## **STATE LOAN MODIFICATION REGULATIONS**

As you know, Lenders Update has tried over the last year to keep you advised of State Regulatory issues affecting companies participating in loan modification programs. The following are recent developments.

### **ILLINOIS**

Senate Bill 2513 was signed into law in Illinois amending the Illinois Mortgage Foreclosure Law. A new grace period will be added to the foreclosure process to allow borrowers who enter counseling to receive an additional 30 day period added to the pre-foreclosure grace period.

Further, a "Grace Period" notice must be sent to borrowers who are more than 30 days past due. The notice will provide advice to delinquent borrowers as to how to obtain counseling to deal with their foreclosure situation and delinquent obligation.

### **MASSACHUSETTS**

#### **Action by the Massachusetts Banking Commission**

On April 27<sup>th</sup> the Massachusetts Commissioner of Banking published an "industry letter" on mortgage loan modifications. The primary subject of the letter is the permissibility of fees charged for loan modification services and related matters.

Can a licensed mortgage in Massachusetts broker receive fees while providing assistance in obtaining a loan modification? The Commissioner answered, NO. Massachusetts law provides a 90 day period in which to cure a default on a mortgage loan, "during which the mortgagor shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default."

The Commissioner found that the legislative intent in enacting this fee prohibition, was in recognition of the overriding purpose of the Act to provide assistance in foreclosure relief to homeowners without increasing the amount of outstanding debt. Because of this, it is not permissible for a broker or any third party to impose a loan modification fee or any other charge, fee or penalty which would be associated with the exercise of the borrower's right to cure the default.

An interesting result?

### Massachusetts Attorney General Goes After Loan Modification Scams

The Attorney General of Massachusetts has obtained a temporary restraining order pursuant to a lawsuit it filed against 4 defendants purportedly involved in a scam involving loan modifications.

Services were offered to assist borrowers to negotiate loan modifications. The defendant's actions, according to the Attorney General, violated the Massachusetts Consumer Protection Act. It is alleged that their conduct in soliciting fees in advance of services, improper disclosure of the services offered and in guaranteeing modifications, constituted unfair and deceptive acts.

### WASHINGTON

The State of Washington's Division of Consumer Services has issued an interpretive letter relative to loan modifications. The conclusion contained in the Division's letter, is that a license is required for companies offering loan modification services to Washington residents. Director Deborah Bortner's letter concludes that "it is the Director's position that individuals and companies taking the borrower's name, monthly income, social security number, property address, estimate of the value of the property and any other information deemed necessary to provide a loan modification or negotiate residential mortgage loan terms are acting as mortgage brokers or loan originators and must be licensed under the MVPA or CLA unless specifically exempt from those acts."

## **BITS AND PIECES**

### New Mexico

New Mexico has enacted the "New Mexico Mortgage Loan Originator Licensing Act". The law derives from the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, known as SAFE. The new New Mexico law follows SAFE by imposing requirements for loan originators including examination and education requirements, bonding and other prerequisites to licensing.

### New York

We have mentioned on past occasions, the ongoing challenge by the State of New York to the Office of the Comptroller of the Currency (OCC) prohibiting New York from enforcement of its state laws against national banks. The case involves the often questioned issue of whether state laws which might

otherwise affect national banks, are pre-empted by Federal law. The original Federal District Court case and eventually the Appellate Court of the Second Circuit opinion, have agreed with the OCC that state law is pre-empted. This generally agrees with the current state of the law. It goes without saying, that the other states agree with New York's position and in fact have filed a brief supporting New York.

The US Supreme Court has heard oral arguments in this case, which is now styled Cuomo vs. The Clearing House Association. The matter is now under review.

**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](mailto: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](mailto:David.j.alt@altandassociates.com)**

**You may view previous issues on our website at**

**[www.altandassociates.com](http://www.altandassociates.com)**