

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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In October the FCC announced a significant rule change relative to the Telephone Consumer Protection Act and a postponement of the new rule for Unsolicited Faxes. In California, a number of legislation developments occurred regarding such issues as eligibility for real estate licenses and the content of Deed of Trusts. We report on these items as well as some interesting information concerning HUD administrative actions.

We also want to remind you of our new publication: *Lenders Update: Guide to State Mortgage Lending Law*. Information concerning the content of the book and ordering is included on our website at www.altandassociates.com

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 new material in detail where relevant. For your convenience, where applicable, the statute, regulation or case can be easily identified in the summary. Our Update includes changes in the legislation available to Alt & Associates by November 15, 2004

FEDERAL ISSUES

FEDERAL COMMUNICATIONS COMMISSION AMENDMENTS TO THE TELEPHONE CONSUMER PROTECTION ACT.

On October 8, 2004 at Federal Register Volume 69, No 195, the Federal Communications Commission published its final rule amending its rules and regulations that implement the Telephone Consumer Protection Act. The amendment dealt with two major changes:

- The Commission established a limited safe harbor period during which persons would not be liable for placing autodialed or artificial or prerecorded message calls to wireless numbers that have been recently ported from wireline to wireless service. Callers will not be considered in violation for calls placed to a wireless number that has been ported from a wireline service within the previous 15 days. This assumes the number is not already on the national do-not-call registry or a caller's company-specific do-not-call list. The fifteen day period will run from the date the port has been completed and the number appears in Neustar's "Intermodal Ported TN Identification Service" as a wireless number. This safe harbor extends only to voice calls and not to text messages which are sent to numbers associated with wireless devices.

- The existing safe harbor rule for telemarketers who must comply with the nation's do-not-call registry has been amended to require such telemarketers to access the national do-not-call list and purge registered numbers from their call lists, no more than 31 days prior to making a telemarketing call. The current period is three months.

EXTENSION OF IMPLEMENTATION OF RULE REGARDING UNSOLICITED FAXES.

Also in October, the FCC extended its stay related to unsolicited commercial faxes. The new rule will now not be effective until **June 30, 2005**. As we know, the current regulations allowed facsimiles transmitted between those who shared a common business relationship. The new rule requires the sender of a fax to obtain written consent prior to transmitting the facsimile. One of the reasons for the delay in implementing the rule is that Congress is considering the appropriateness of this new change.

ADMINISTRATIVE ACTIONS RELATIVE TO HUD VIOLATIONS.

HUD has released its regular report on Mortgagee Review Board Administrative Actions. We thought it might be instructive to look at the approximately 66 administrative actions which were reported.

HUD assessed fines ranging up to \$500,000 for violations of its rules and regulations. In many cases these fines were accompanied by the lender's agreement to indemnify HUD for losses incurred on defective loans. Interestingly, four of the actions were against state housing authorities in California, Colorado, Connecticut and Wisconsin. The most serious was the action against California Housing Finance Agency in which a \$322,500 "administrative payment" was assessed against the state agency.

We found the following as the most prevalent violations:

- Failure to verify the source and the adequacy of funds required for closing.
- Failure to adequately verify employment.
- Using false or inaccurate income to qualify mortgagors.
- Failure to obtain the required inspections and certifications relating to property eligibility.
- Failure to retain the entire case file for a minimum of two years.
- Failure to ensure that employees work exclusively for the lender.
- Failure to pay all operating expenses for branch and satellite offices.
- Failure to ensure branch managers only managed one branch.
- Sharing branch office space with another entity.
- Failure to implement and maintain a quality control plan.
- Failure to identify and/or provide an analysis of prior sales that have occurred within one year.

Please note that a number of these violations involved improperly run branch operations and such issues as exclusive employees and employee responsibility for branch costs and expenses.

STATE ISSUES

CALIFORNIA:

1. Licensing LLC's as DRE Licensees.

As many entities operating in California have discovered, the Department of Real Estate does not license Limited Liability Companies as Real Estate Licensees. Only individuals and corporations may obtain a California Department of Real Estate License.

However, this may soon change. Attorney General, Bill Lockyer, has issued an opinion stating that a company licensed under the Business and Professions Code (DRE licenses are issued under the Business and Professions Code), may conduct their activities as an LLC, except in the case where an entity provides "professional services". The opinion draws a distinction between "professional services" and "non-professional occupational services". Professional services are those that require specialized knowledge and academic preparation such as doctors, dentists, nurses, and marriage and family counselors, among other licensed occupations.

However, what the opinion does not state, is whether real estate brokers are included in the "professional services" category. The DRE must now reach a determination as to whether a real estate broker is a professional or not, for purposes of the law. If licensees are not considered professional, then the DRE will, according to Lockyer's opinion, be required to register LLC's.

2. New Department of Real Estate Reporting Requirements.

Governor Schwarzenegger has signed into law AB 2693. The most significant provision of the law requires a real estate broker who brokers or solicits loans, to report these activities on an annual basis to the Department of Real Estate.

3. Content of Deed of Trust

AB 1979, also signed by the Governor, changes the requirement that a lender set forth provisions for variable interest rates in Deeds of Trust. The new statute enlarges the definition of "Supervised Financial Organizations" which are exempt from including this information in the security instruments to include not only state or federally regulated banks, savings associations, savings banks and credit unions, but also licensed finance lenders and licensed residential mortgage lenders.

TENNESSEE

We have previously reported that the State of Tennessee is requiring Mortgage Loan Originators to register with the state. This requirement is effective **January 1, 2005**. The Department of Financial Institutions has now proposed a definition of Mortgage Loan Originator. The term does not encompass a clerical employee. However, the proposed rule requires that, to be exempted from Mortgage Loan Originator registration, a clerical employee may not contact potential borrowers. Obviously this is cause for concern among lenders because processors often contact borrowers to verify or obtain information. We will let you know.

LEGISLATION EFFECTIVE DATES

Maryland	HB 1447	June 30, 2004	October 1, 2004	Property Insurance
Rhode Island	HB 7799	July 30, 2004	Nov 1, 2004	Loan Payoffs
Illinois	HB 5197	August 30, 2004	August 5, 2004	Reverse Mortgage Disclosures
Louisiana	HB 1143	August 30, 2004	January 1, 2005	Sale of Goods
North Carolina	SB 676	August 30, 2004	October 1, 2004	Reverse Mortgage Loans
Massachusetts	HB 4880	Sept 30, 2004	August 9, 2004	High Cost Loans
California	AB 2693	Nov 30, 2004	January 1, 2005	Real Estate Brokers
California	AB 1979	Nov 30, 2004	January 1, 2005	Variable Interest Rates

Lenders Update is published via e-mail as a service to our colleagues in the financial industry throughout the United States.

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.

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