

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

November 2009

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 October 28, 2009.

<h3>NEW CALIFORNIA REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS</h3>
--

As we know, the Secure and Fair Enforcement for Mortgage Licensing Act (the “SAFE Act”) was enacted by the Federal Government in 2008. This created a Nationwide Mortgage Licensing System and Registry (the “Registry”). In most respects, the mortgage origination licensing requirements of the Act are mandatory for all states.

To implement these requirements, California has enacted Senate Bill Number 36, which was signed by Governor Schwarzenegger on October 11, 2009. The licensing provisions of the Act take effect for Licensees under the California Finance Lenders Law (“CFL”) and the California Residential Mortgage Lending Act (“RML”) on July 1, 2010 and under the

California Real Estate Law on December 1, 2010. Persons required to hold a Mortgage Loan Originator License under the CFL or RML law are required to obtain that license by July 31, 2010. Individuals who are required to hold a Mortgage Loan Origination License Endorsement under the California Real Estate Law, must obtain that Endorsement by December 31, 2010.

The statute in the form reviewed by this firm is approximately 71 pages. This article must of course be just a brief summary. We will deal with Real Estate Licensees first and then with the CFL and RML licensees together.

A mortgage loan originator is an individual who, for compensation or gain takes a residential mortgage loan application or offers or negotiates terms of residential mortgage loans. This does not apply to loan processors or underwriters who do not hold themselves out as loan originators. A residential mortgage loan is defined as a loan for personal family or household purposes secured by a dwelling, which is defined as a residential structure which contains one to four units whether or not that structure is attached to real property. (This definition of dwelling is different for licensees under the RML law as noted below.)

SB 36 requires that a DRE licensee obtain a Real Estate License Endorsement to his/her license to engage in the business of Mortgage Loan Originator. The bill requires submission of detailed and specific background information to the Nationwide Mortgage Licensing System and Registry to obtain this Endorsement. Specific educational requirements of 20 hours of approved and specified classes are mandated in order to obtain the endorsement plus 8 hours of annual continuing education in order to renew the Endorsement. Real Estate Licensees are required to submit annual business activity reports to the Real Estate Commissioner. Violations of law, and specifically of the new provisions must be provided to the Registry. Each mortgage loan originator will receive a specific unique identifier as a mortgage loan originator which will be obtained from the Registry.

All applicants must pass a written test prepared by the Nationwide Mortgage Licensing System and Registry. As an aside, this Registry was developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

In a requirement which does not apply to other California licenses, any real estate broker or sales person who makes or arranges loans secured by real property containing one to four residential units, must notify the California Department of Real Estate by January 31, 2010 or within 30 days of commencing that activity, whichever is later. This notification must contain detailed and specific information as will be set forth in regulations to be promulgated by the DRE Commissioner.

SB 36, as we have mentioned, also requires the licensure and regulation of mortgage loan originators under the California Finance Lenders Law (CFL) and the California Residential Mortgage Lending Act (RML). The bill will require mortgage loan originators employed by CFL or RML licensees to obtain a license and register through the Registry. As with real estate licensees, detailed and specific background information must be submitted to the Registry. Initial education requirements of 20 hours of approved and specified classes are required as well as the successful completion of an approved test. Annual renewals are required and 8 hours of continuing education each year. Annual reports to the Registry will be required. All mortgage loan originators who are licensed will also be assigned a specific unique identifier.

As to CFL licensees:

- The origination of a residential mortgage loan requires a mortgage originator license. The definition of “Residential” is the same definition used for California Department of Real Estate requirements, which is a personal, family or household loan secured by a Deed of Trust on a dwelling that contains one to four units whether or not that structure is attached to real property.**

- Again, loan processors or underwriters who do not hold themselves out to the public as mortgage loan originators are exempt parties from the license requirements.
- A CFL licensee who employs one or more mortgage loan originators must continuously maintain a minimum net worth of at least \$250,000, which is an increase from the current requirement of \$25,000.
- Also, a CFL licensee must maintain a surety bond of \$25,000 which may be increased by rule of the Commissioner based on the dollar amount of residential mortgage loans originated by the licensee.

As to RML licensees, the requirements are identical to those discussed above except as follows:

- The definition of residential real property RML mortgage loan originators is property located in the state that is improved by a one to four family dwelling.
- In addition to the other exemptions from the license requirement for mortgage loan originators, are individuals who renegotiate terms for any existing mortgage loans held or serviced by his/her RML employer and who do not otherwise act as a mortgage loan originator.
- Residential Mortgage Lenders are required to maintain a surety bond in the amount of \$50,000 which can be increased by order of the Commissioner to \$100,000, if it is determined that the licensee is not in compliance with any provisions of law or rule. The bond may also be increased based on the dollar amount of residential mortgage loans originated.
- When a borrower requests that an RML lender arrange a residential mortgage loan with another lender, a detailed written Loan Brokerage Agreement is required. California Financial Code Section 50701 sets out the continuing and revised criteria for the content and regulation of these agreements.

As indicated above, this is a brief summary of the new statutory requirements. It does not contain further clarifications and regulations which will be forthcoming from the California Department of Corporations and the Department of Real Estate.

We wish you all good luck in implementing these new requirements into your operations.

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