
LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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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 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 September 28, 2008.

NEW CALIFORNIA LEGISLATION

On last Friday, September 26, 2008, Governor Arnold Schwarzenegger signed a package of legislation effecting California Department of Real Estate Licensees, California Department of Corporation Lenders and the unique category in California called “Foreclosure Consultants”. We want to call these briefly to your attention. At the time of preparing this supplement to our monthly Update, these new statutes were not yet on the DRE or DOC site. They should be soon. When available, you can view them in their entirety at www.corp.gov/ and www.dre.gov/.

Foreclosure Consultants

A B 180. California law defines a foreclosure consultant as a person who offers to perform specified services for a homeowner relating to a foreclosure sale. The law prohibits and requires certain conduct of a person or entity who provides these services.

The law as it existed, prohibited a foreclosure consultant from entering into an agreement to assist the owner in arranging the release of surplus funds from the foreclosure sale, prior to 65

days after the trustee's sale is conducted. This bill, would instead, prohibit a foreclosure consultant from entering into this type of agreement at any time.

Present law allowed a homeowner to cancel a contract with a foreclosure consultant within 3 days after signing the contract by providing written notice of the cancellation at the address provided by the foreclosure consultant. The law also required that the contract be written in the same language as principally used by the foreclosure consultant to describe his or her services.

This new statute instead, allows a homeowner to cancel a contract with a foreclosure consultant within 5 days after signing the contract, and to do so by mail, e-mail or facsimile. It requires that a contract with a foreclosure consultant be written in the language principally used by the foreclosure consultant to describe his or her services or to negotiate the contract and would require the foreclosure consultant to provide the owner, before the owner signs the contract, with a completed contract written in that language.

Perhaps most significantly, the bill requires a foreclosure consultant to register with the Department of Justice and to obtain and maintain a surety bond of \$100,000. A violation of these provisions will be a crime.

General Application

S B 1055. This statute provides conformity with federal income tax law by conforming to specified provisions of the Federal Mortgage Forgiveness Debt Relief Act (see Lenders Update February issue) which relates to the forgiveness of qualified principal residence indebtedness of a borrower/taxpayer's income which occurs between January 1, 2007 and January 1, 2009.

DRE Statutes

S B 1448. This bill increases the punishment for the offense of acting without a license as a DRE broker or salesperson. The maximum fine is now increased to \$20,000 for an individual and \$60,000 for a corporation.

S B 1461. This statute creates the requirement for a DRE license to include his/her/its license identification on solicitation materials that are intended as "the first point of contact" with consumers including business cards, stationery, advertising flyers and other material designed to solicit the creation of a professional relationship.

SB 1737. This statute will now allow the DRE to prohibit a person from a position of employment, management or control, if a person has committed a violation of Real Estate law or regulation or had committed a crime or been held liable in a civil action for an offense involving dishonesty, fraud or other qualification, functions or duties of a person engaged in the real estate business.

The statute also requires a person or entity that arranges financing to make a written disclosure of its role, similar to that provided by a licensee to sellers and buyers, with 24 hours of engagement.

DOC License Lenders

A B 69. The Department of Corporations provides for the licensing and regulation of California Finance Lenders and Residential Mortgage Lenders. This new statute will require these licensees to provide reports concerning residential mortgage loan servicing activities.

These reports will also be requested of residential loan servicers not subject to DOC's jurisdiction. However, responses to this request will be voluntary.

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

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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:

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