

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

David Jerome Alt
Attorney at Law
David.j.alt@altandassociates.com
www.altandassociates.com

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612

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CFPB CAUTIONS

Today, the CFPB published its Supervisory Highlights Summary for the past summer. The summary contains the results for many areas within the jurisdiction of the Bureau. We thought it might be informative to briefly set out those related to Loan Origination.

2.5 Mortgage origination....

2.5.1 *Know Before You Owe* mortgage disclosure rule.

Supervision completed its first round of mortgage origination examinations for compliance with the *Know Before You Owe* mortgage disclosure rule. The Bureau stated that it would be sensitive to the progress made by supervised entities focused on making good faith efforts to come into compliance with the rule upon the effective date of October 3, 2015. Initial examination findings and observations concluded that, for the most part, supervised entities, both banks and nonbanks, were able to effectively implement and comply with the *Know Before You Owe* mortgage disclosure rule changes. However, examiners did find some violations. Listed below are some of the violations found by examiners relating to the content and timing of Loan Estimates and Closing Disclosures:

- Amounts paid by the consumer at closing exceeded the amount disclosed on the Loan Estimate beyond the applicable tolerance threshold;
- The entity(ies) failed to retain evidence of compliance with the requirements associated with the Loan Estimate;
- The entity(ies) failed to obtain and/or document the consumer's intent to proceed with the transaction prior to imposing a fee in connection with the consumer's application;
- Waivers of the three-day review period did not contain a bona fide personal financial emergency;
- The entity(ies) failed to provide consumers with a list identifying at least one available settlement service provider, if the creditor permits the consumer to shop for a settlement service;
- The entity(ies) failed to disclose the amount payable into an escrow account on the Loan Estimate and Closing Disclosure when the consumer elected to escrow taxes and insurance;
- Loan Estimates did not include the date and time at which estimated closings cost expire;
- The entity(ies) failed to properly disclose on the Closing Disclosure fees the consumer paid prior to closing.

2.5.2 Failure to reimburse unused portions of a required service deposit where certain disclosure language was used constituted an unfair practice.

At one or more entities, pursuant to certain disclosure language a specified service deposit was collected from consumers but unused portions were not reimbursed when consumers withdrew their applications. This would constitute unfair acts or practices in those cases where the loans did not proceed to closing due to the entity's unreasonable actions or inactions. Supervision directed each entity to conduct a review to identify impacted consumers. Refunds were provided to consumers where the loan files could not support retention of the service deposit.

2.5.3 Deceptive practice involving an arbitration notice on certain residential mortgage loan documents.

Under Regulation Z, a contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. Despite this prohibition, at one or more entities examiners identified template language for certain residential loan document(s) containing a notice that the note is subject to arbitration. Supervision concluded that use of the arbitration-related notice constitutes a deceptive act or practice since it is likely to mislead a reasonable consumer into believing that a claim arising under the residential loan document must be submitted to arbitration. After having viewed the notice, a consumer would have been more likely to agree to post-dispute arbitration or to fail to pursue judicial remedies under the mistaken belief that

arbitration was required. Supervision directed one or more of the entities to cease further use of the template.

It seems that it is always a good idea review these findings to ensure our practices and policies do not run afoul of these pitfalls.

Also, let's keep in mind that in an area where the perception is that enforcement may be dropping off on the federal side under the new administration (in reality, this doesn't appear to be the case), states seem to be stepping into this perceived void and increasing their reviews and enforcement actions.

ABOUT ALT & ASSOCIATES

Alt & Associates publishes the Lenders Update via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

- **Regulatory assistance, both state and federal**
- **Compliance work**
- **Operational advice**
- **Transactional work**
- **Agreements such as Loan Officer Compensation Agreements etc.**
- **Various forms of employee, officer, and/or manager contracts**
- **Litigation representation**

You may direct any questions or comments directly to:

David J. Alt, Esq.

David.j.alt@altandassociates.com

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