

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

September 28, 2010

HUD UPDATES FOR SEPTEMBER

HUD has published several new Mortgagee Letters during the month of September. Four stand out for review by all HUD lenders. The following is a brief summary. The entire Letters can be found at www.hud.gov by clicking “Resources” and then of course, “Mortgagee Letters”.



Mortgagee Letter 2010-28, Changes to FHA Mortgage Insurance Premiums

Pursuant to new legislation signed by President Obama in August, HUD now has additional flexibility regarding the amount of the mortgage insurance premiums charged for Federal Housing Administration single family housing loan programs. As a consequence, HUD can, and has, increased the amount of annual mortgage insurance premiums. These changes will go into effect for loans with case numbers assigned on or after October 4th of this year. The details of the changes are set forth in full in the Mortgagee Letter.

Mortgagee Letter 2010-29 re: Minimum Credit Scores and Loan Evaluations

This Mortgagee Letter introduces new minimum credit score and loan to value ratio requirements for FHA insured loans. As before, the Guidance becomes effective, for case numbers assigned on or after October 4th of this year.

Some of the changes are as follows:

-  Borrowers with a minimum decision credit score above 580 are eligible for maximum financing while those between 500 and 579 are limited to 90 % LTV. Borrowers with credit scores of 500 and below are not eligible.
-  Borrowers who have insufficient credit or nontraditional credit can still be eligible for maximum financing but must meet the HUD underwriting Guidance set forth in HUD 4155.1 4.C.3.

The new requirements will apply to all Single Family programs except Title 1, HECMs and HOPE for Homeowners programs.

Mortgagee Letter 2010-31, Maximum loan amounts

Maximum mortgage amounts are determined by legislative action with the most recent legislation occurring in 2008. Exceptions to these maximum mortgage amounts for the FHA multifamily housing programs are generally set by geographic area such as “High Cost Areas” or for “Special Projects”. However, the legislation does not determine which areas are considered High Cost Areas. Rather, the Office of Multifamily Development develops a list of these areas. The revised list for 2010 is attached to the Mortgagee Letter.

Mortgagee Letter 2010-34, Second Option for Premiums for HECMs

HUD has announced a second premium option for Home Equity Conversion Mortgages, or HECMs. FHA has designed a new program called the HECM Saver as a second initial mortgage insurance premium option for the stated purpose of lowering closing costs. It is designed for mortgagors who want to borrow a smaller amount than would be available with the HECM Standard option. For loans with case numbers assigned after October 4, 2010 mortgagees may select either the HECM Saver or HECM Standard as an initial MIP. The Mortgagee Letter provides policy guidance for both the Saver and Standard programs, setting forth the amount of the MIP, the availability of both options for existing programs, the calculation of premiums for refinance transactions, and other technical provisions.

FORENSIC AUDITS AND THE TRUTH IN LENDING ACT

Last month, on August 16th, we published our first article on Forensic Audits and the Truth in Lending Act. It is available on our website at:

www.altandassociates.com

In that Update we addressed the use of “forensic audits” performed for borrowers and used as a basis for challenging loans to secure loan modifications. As pointed out, a frequent finding in these forensic reviews is the lender’s violations of the Truth in Lending Act, resulting in borrower’s attempts to rescind his/her loan well after its closing. As indicated in our recent article, if proper disclosures are not provided by the creditor at closing, the usual 3 day period to rescind a loan may be extended to 3 years.

If the borrower thinks it has this extended 3 year period to rescind, based on the lender’s TIL violation, it is required to provide the owner of the loan notice of its rescission within this 3 year period. Let’s assume (a good guess) the holder of the obligation doesn’t cooperate and rescind. The borrower must sue to enforce its rescission rights. When must this occur?

As we discussed in the case of Sherzer vs. Homestar Mortgage Services, Civil Action No. 07-5040 (E.D. Pa., May 7, 2010) the court reviewed this question; When must a consumer commence a suit to enforce rescission once it has provided the Note holder a proper notice of rescission? In the Sherzer case, the court found that the borrower must bring an action to enforce its rescission notice within 1 year of the lender's failure to respond to the borrower's notice of rescission, whether this 12 month period expires within the initial 3 year period of the extended rescission period or after it has expired.

The case of Lee vs. US Bank, No. C 10-1434 RS (N.D. CAL, June 30, 2010) adds additional nuance to this issue. Again, the borrower, in an attempt to prevent foreclosure, notified the lender of rescission of the loan, which, because of alleged faulty Truth in Lending disclosures, was now subject to the extended 3 year rescission period. The loan was consummated on February 12, 2007 and Lee sent his notice of rescission on February 5, 2010. However, Lee did not file the law suit to enforce the rescission until after the extended 3 year period had expired (but within the one year period that would be allowed by Sherzer).

The court looked at whether such an action could be filed after the 3 year period had expired? The Lee court, a Federal District Court in the Ninth Circuit, found that it could not. The trial judge decided that, in order to rescind, the consumer has to give notice that it is cancelling and begin a law suit to enforce the rescission within the 3 year period. If notice is given within the 3 year period but the consumer fails to also initiate an enforcement action within that period, a court no longer has jurisdiction over the matter and the consumer loses the right to cancel. Several other similar Federal District Court trial decisions mirror this finding.

The Lee court relied on a case styled Miguel vs. Country Funding Corp., 309 F.3D1161 (Ninth Cir. 2002). Arguably, however, as has been pointed out by several commentators, the Miguel case does not stand for this proposition. It is based on the effectiveness of the initial notice of rescission which in Miguel, was given to the wrong person.

However, whether the Lee case and the other cases, are properly founded or not, they remain on the books as decisions favoring lenders and, if used as precedent, stop the enforcement period at 3 years.

Our 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