

# LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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As happens every election year, combined with the end of legislative terms, we find ourselves with little upon which to report. However, as promised, this month we have a summary of the new Massachusetts High Cost Loan (anti-predatory) legislation. This summary mirrors many other states in setting a threshold over which a loan becomes defined as “high cost” and a number of restrictions and/or limitations become operative.

*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 September 15, 2004*

## PREDATORY LENDING

### MASSACHUSETTS

Massachusetts HB 4880 provides restrictions on high cost mortgage loans and prohibits certain practices in home mortgage lending. The bill became effective the day it was signed by the Governor, **August 9, 2004**.

### High Cost Home Loans

The Act begins by defining a “High Cost Mortgage Loan” as a home mortgage loan that meets one of the following conditions:

- the annual percentage rate at consummation will exceed by more than eight percentage points for first-lien loans, or by more than nine percentage points for subordinate-lien loans, the yield on the United States Treasury securities having comparable periods of maturity to the loan maturity.
- excluding either a conventional prepayment penalty or up to two bona fide discount points, the total points and fees exceed the greater of five percent of the total loan amount or \$400.

A creditor may not make a High-Cost Home Mortgage Loan without first receiving certification that the borrower has received counseling on the advisability of the loan transaction. The certification must be from a counselor with a third-party nonprofit organization approved by HUD, a housing finance agency of Massachusetts, or the regulatory agency that has jurisdiction over the creditor.

A lender shall not make a High Cost Home Mortgage Loan unless, at the time the loan is consummated, the lender reasonably believes that one or more of the borrowers will be able to make the scheduled payments to repay the home loan based upon a consideration of the borrower's current and expected income, current and expected obligations, employment status, and other financial resources other than the borrower's equity in the dwelling which secures repayment of the loan.

The following outlines several of the restrictions set forth by the Act:

- A High Cost Home Mortgage Loan may not contain any provision for prepayment fees or penalties.
- A High Cost Home Mortgage Loan may not include the financing of points and fees in excess of 5% of the total loan amount or \$800, whichever is greater.
- A High Cost Home Mortgage Loan may not contain a provision that increases the interest rate after default.
- A High Cost Home Mortgage Loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, unless the payment schedule is adjusted because of the seasonal or irregular income of the borrower.
- A High Cost Home Mortgage Loan may not contain a demand feature that permits the lender to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:
  - Fraud or material misrepresentation by the consumer in connection with the loan that is not induced by the lender;
  - The consumer fails to meet the repayment terms of the agreement for any outstanding balance and the consumer has been contacted in writing and afforded a reasonable opportunity to meet the outstanding balance;
  - There is any bona fide action or inaction by the consumer that adversely and materially affects the lender's security for the loan.
- A High Cost Home Mortgage Loan may not contain a payment schedule with regular periodic payments such that the result is an increase in the principal amount.
- A lender may not pay a contractor under a home improvement contract from the proceeds of a High Cost Home Mortgage Loan other than:
  - by an instrument payable to the borrower or jointly to the borrower and contractor, or
  - at the election of the borrower, through a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to the disbursement of funds.
- A lender may not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a High Cost Home Mortgage Loan that refinances all or any portion of the existing loan or debt.

HB 4880 has also made the following changes applicable to all home loans:

### **Borrower's Interest**

A lender may not knowingly make a home loan if the home loan pays off all or part of an existing home loan that was consummated within the prior 60 months, unless the refinance is in the borrower's interest. The burden is on the lender to determine and demonstrate that refinancing is in the borrower's best interest.

### **Prepayment Fees**

A residential mortgage note may not be subject to a prepayment penalty in excess of the balance of the first year's interest or 3 months interest, whichever is less. This does not apply if an anticipatory payment is made within 36 months from the date of the note for the purpose of refinancing such loan with another financial institution. In this event, any additional payment cannot exceed 3 months interest. No prepayment fee or additional penalty can be required by a mortgagee if the mortgage note is paid in full after 36 months from the date of the note.

### **Late Fees**

Late charges or late payment penalties may not be charged on residential mortgages unless the penalty is specifically authorized in the loan documents. A residential mortgagee may not require the mortgagor to pay a penalty or late charge for any payment paid within 15 days, or in the case of a bi-weekly payment, paid within 10 days, from the date the payment is due. Late charges or late payment penalties may not exceed 3 percent of the amount of principal and interest overdue.

### **Insurance**

A lender may not finance, directly or indirectly, any credit life, credit disability, credit unemployment insurance, credit property insurance, or any other life or health insurance premium through a home mortgage loan. Premiums on insurance calculated and payable on a monthly basis by the borrower will not be considered financed by the lender.

### **Licensing**

Any person who sells or agrees to sell goods or services or both or merchandise certificates where the sale is secured by a mortgage on real property located in the commonwealth must first obtain a license from the Commissioner.

## **LEGISLATION EFFECTIVE DATES**

New Hampshire	HB 1320	June 30, 2004	July 23, 2004	Licensing Requirements
Connecticut	SB 157	June 30, 2004	May 21, 2004	Rate Lock-Ins
New Jersey	AB 2052	June 30, 2004	November 11, 2004	Home Improvement Contracts
Alaska	HB 15	June 30, 2004	July 1, 2004	Telephone Solicitations
Tennessee	SB 3455	June 30, 2004	January 1, 2005	Managing Principals/Loan Originators
Maryland	HB 1447	June 30, 2004	October 1, 2004	Property Insurance
Louisiana	HB 332	July 30, 2004	June 10, 2004	Licensing and Education
Louisiana	HB 554	July 30, 2004	July 6, 2004	Delinquency Charges
Louisiana	HB 1030	July 30, 2004	July 12, 2004	Telephone Solicitations

New Hampshire	SB 500	July 30, 2004	July 1, 2004	Escrow Accounts
Rhode Island	HB 7799	July 30, 2004	November 1, 2004	Loan Payoffs
New Jersey	SB 279	July 30, 2004	July 6, 2004	Predatory Lending
California	SB 1150	August 30, 2004	January 5, 2004	Advertising Disclosures
Hawaii	SB 2902	August 30, 2004	April 19, 2004	Telephone Solicitations
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

**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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