

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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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 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 entire new material in detail where relevant. For your convenience, the applicable statute, regulation or cases can be easily identified in the summary. Our Update includes changes in legislation available to Alt & Associates by September 17, 2005

STATE ISSUES

CALIFORNIA.

Reverse Mortgages

California Senate Bill 1609 was signed by Governor Schwarzenegger on **September 5, 2006**. The new statute deals specifically with reverse mortgages and prohibits a lender from requiring the purchase of an annuity as a condition of obtaining a reverse mortgage. Lenders and brokers are prohibited from offering an annuity to the borrower, or referring the borrower to anyone for the purchase of an annuity, prior to the closing of the loan.

Prospective borrowers must be referred to a housing counseling agency for counseling prior to accepting a complete application. Lenders must receive certification of this counseling prior to acceptance of the application or assessing any fees.

The law set forth additional disclosures. Further, lenders must provide a specified list of independent home counselors.

California law requires any person who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean to provide translation of the contract or agreement prior to execution. Reverse Mortgages are now included as a contract for purposes of these requirements.

MISSISSIPPI

Consumer Protection Rules

Mississippi has implemented new rules under the Mississippi Mortgage Consumer Protection Law. These rules are applicable to licensees and registered companies under the Mortgage Consumer Protection Law.

Licensing Requirements

- The initial license fee is \$750.00.
- Principal Officer: Mississippi has clarified that a person must be named as principal officer for a company applying for a mortgage company license. The principal officer is an employee who has at least 2 years of experience in mortgage lending. If the principal officer does not have 2 years of experience in mortgage lending, he/she may take and pass an examination approved by Mississippi instead. In addition, the principal officer must live within 125 miles from the address listed on the license.
- Approval or denial of a Mortgage Company license will be made after 15 days from the receipt of the completed application, payment of fees and final verification from FBI/Dept. of Public Safety.

Exemptions from Licensing

The new rules provide a list of entities exempt from licensing under the Mortgage Consumer Protection Act. These include:

- A bank holding company or financial holding company and their wholly owned subsidiaries;
- A bank, credit card bank, savings institution, savings and loan institution, trust company or credit union;
- A wholesale lender or an entity that is approved by FNMA, FHLMC, GNMA or HUD.
- A de minimus exemption exists for any person who engages in owner-financing or engages in the financing of a consumer loan secured by residential immovable property. The rules allow such person to make no more than 12 residential loan transaction in a 12 month period starting October 1 through September 30. If the transaction is a mortgage loan, within 30 days the company must submit a \$10.00 fee and proper documentation detailing the transaction.

Persons who claim an exemption as a wholesale lender will have to register by filing an initial application and provide additional documentation. The additional documentation is as follows:

- A wholesale lender must provide a letter, on company letterhead from the principal of the company stating that the activities of the company are in compliance with the definition of a wholesale lender. A wholesale lender is defined as any person or entity that makes a mortgage loan, or purchases or services mortgage loans, utilizing the services of a person exempted, licensed or registered under this chapter.
- A person registered with FNMA, FHLMC or GNMA must provide a copy of the formal notice of approval and a copy of the most recent audited financial statement.
- A person registered with HUD must provide a copy of the formal notice of approval and a copy of the most recent audited financial.

In addition, the above must also register any loan originators and branches.

Loan Originators

Loan originators can only work for one licensed/registered mortgage company at a time. The license/registration is not transferable. This means that once a loan originator leaves, he/she must submit another initial application, fee and fingerprint cards. In addition, the loan originator must work from a registered office listed on the loan originator's application. If the loan

originator lives more than 125 miles away from this location, Mississippi will deny the application.

Branch Offices

Each branch office, in Mississippi or outside Mississippi must be registered. Each branch office must have at least 1 registered loan originator working from that location. In addition, if the branch or main office is located in Mississippi, signage outside the company must include the words “Mississippi Licensed Mortgage Company” or “Mississippi Registered Mortgage Company”.

Advertisements

Mississippi prohibits any advertising that is false, misleading or deceptive. All advertisement must state “Mississippi Licensed Mortgage Company” or for registered companies, “Mississippi Licensed Registered Company”. Further, any advertisement that contains an interest rate or monthly payment amount must include: (1) the interest rate of the mortgage whether fixed or variable and the adjusted index and frequency of the adjustments; (2) the terms in years or month to fully repay the mortgage by making the regularly scheduled payment and (3) the APR. Further, business cards are considered to be a form of advertisement and must follow the above regulations.

Record Keeping

Records must be kept at the main office location. If the company wishes to keep the records at a different location, the company must obtain approval from the Department Commissioner. A copy or original of all documentation dated and signed by the borrower and/or loan originator must be kept for a minimum of 36 months.

Further, Mississippi requires that each licensee or registered company maintain a journal of mortgage transactions at the principal place of business which should include:

- Name of applicant(s);
- Date of application; and
- Disposition of loan application, indicating date of loan funding, loan denial, withdrawal and name of lender if applicable.

NEW YORK

Social Security Numbers

On **September 15, 2006** Governor Pataki signed Senate Bill 6909, which contains the following prohibitions or requirements:

- It is prohibited to intentionally communicate to the general public, an individual’s social security account.
- It is prohibited to print an individual’s social security number on any card or tag required for the individual to access services or products.
- Individuals cannot be required to transmit his or her social security accounts over the internet, unless the connection is secure and the social security number is encrypted. This includes use of the social security number to access the website.
- An individual’s social security account number cannot be included on any documents mailed to the individual unless required by law.

Our monthly Lenders Update is published via e-mail as a complimentary service to our subscribers and clients in the financial industry throughout California and the United States.

Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at www.altandassociates.com

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 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. If you have any questions please contact:

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