LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

ALT & ASSOCIATES

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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, cases or website can be easily identified in the summary. Our Update includes information available to Alt & Associates by September 21, 2007

FEDERAL ISSUES

HOUSE OF REPRESENTATIVES PASSES FHA REFORM BILL

On September 18, 2007, the U.S. House of Representatives passed H.R. 1852 which is entitled the "Expanding American Homeownership Act of 2007" brought on the by mortgage lending crisis and the current non-viability of FHA loans in some markets. Chairwoman, Maxine Waters of the Subcommittee on Housing and Community Opportunity, is quoted as saying:

> "*There is an affordable housing crisis in America. In recent months, that crisis has exploded beyond the poorest renters and homeowners, to threaten the domestic economy.* H.R. *1852 is a necessary step in walking us back from the brink and in the direction of meeting the housing needs of all Americans."*

The Bill includes the following provisions:

- It increases the funding level for housing counseling.
- Authorizes lower down payments for borrowers.
- Removes the loan cap for reverse mortgages, raises loan limits and reduces the maximum fee lenders can charge.
- Authorizes the FHA to enter into higher risk loans (as long as the borrowers are still qualified).
- Significantly increases single family loan limits. Limits would now be tiered to the lower of 125% of the local area median home price or 175% of the national GSE conforming loan limit.

We will see what, if anything, the Senate does with this legislation.

HOEPA POINTS AND FEE TRIGGERS

As we know, the Home Ownership and Equity Protection Act requires that the fee limits which trigger the terms of HOEPA are adjusted annually. In an adjustment which is unlikely to change anyone's policies or operations significantly, the new limits effective **January 1, 2008** are 8% of the total loan amount or $561 (the former limit was 8% or the total loan amount or $547).

STATE ISSUES

ALASKA

Mortgage Broker, Lender, and Loan Originator Licensing Law

H.B. 162 was signed by Alaska's Governor, Sarah Palin. This significantly changes the law of Alaska which has provided very few regulations applicable to mortgage brokers and loan originators. The new law is effective **July 1, 2008**. However, persons who are brokering or originating loans on that date are "grandfathered in" and are not required to be licensed until **March 1, 2009**.

The Alaska Department of Commerce, Community, and Economic Development will be administering this law and regulating its licensees who will have to file annual reports, pay annual fees and complete education requirements. Application forms are not yet available. The text of this law can be found under www.legis.state.ak.us/basis and search for Bill HB 162.

NEVADA

Clarification on A.B. 440

As the result of a meeting held in Nevada on September 13, 2007, Nevada regulators may have added some clarity to the new A.B. 440, which becomes effective on **October 1, 2007.** One provision of this statute states:

> *"knowingly or intentionally make a home loan, other than a reverse mortgage to a borrower, including, without limitation, a low-document home loan, no-document home loan or stated-document home loan, without determining, using any commercially reasonable means or mechanism, that the borrower has the ability to repay the home loan."* [Emphasis added]

The question obviously is what does "commercially reasonable means or mechanism" mean as it relates to determining the borrowers ability to repay the loan?

The statute defines "low-document", "stated-document" and "no-document" home loans. These definitions apply to the borrower's ability to repay the loan and what documentation the borrower must submit to verify this ability. The regulators also feel that the statutes apply to the lender's obligation to verify the accuracy of this information. This is left to the lender's use of a "commercially reasonable means or mechanism". As an aside, the Division now believes that all home loans subject to this requirement are home loans that have not closed or funded by the effective date of **October 1, 2007.**

Absent any statutory definition, the Mortgage Lending Division believes that licensees must enquire as to a borrower's current and future income and financial status, but the Division does not specify methods as long as they are reasonable and are used within the lending community.

However, the letter issued on September 13, 2007 sets up Guidelines for making this determination. Generally, the Guidelines require a meeting with the borrowers to discuss their economic situation, and also provides that the licensees must verify the information and suggests several methods. Finally, the licensees must document these discussions and verifications. The Division has suggested a worksheet be filled out for each loan, an example of which was attached to the letter. If this worksheet is filled out in good faith, the Division feels that the lender will be deemed, for examination purposes, to be in compliance with the requirements of A.B. 440. The Division's letter and the accompanying worksheet can be found at the Department's website at www.mld.nv.gov under MLD Updates.

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 susan.graaff@altandassociates.com

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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