LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

ALT & ASSOCIATES

Tel: (949) 756-5250 *Attorneys at Law* Fax: (949) 756-5270
e-mail: 18010 Skypark Circle, Suite 200
david.j.alt@altandassociates.com Irvine, California 92614

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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 April 15, 2005

NATIONAL ISSUES

SIXTH CIRCUIT DECISION ON RESCISSION RIGHTS

In the case of Barrett v. JP Mortgage, the Federal Court of Appeals for the Sixth Circuit reached the very borrower friendly decision that refinancing a loan does not cut off rescission rights. In this case the loan was refinanced by a second lender, JP Morgan. The Court found that Regulation Z and the Truth-in-Lending Act specifically defined when the Right to Rescind is extinguished. The Right to Rescind expires upon the first occurring of the following three events:

- Three years after consummation.
- Upon transfer of all of the consumer's interest in the property.
- Upon sale of the property.

The Court found that the Truth-in-Lending Act and Regulation Z at no point indicates that refinancing terminates these rights.

This is obviously very troubling for all lenders, particularly the innocent second lender refinancing a loan. However, because it is a Sixth Circuit decision (Kentucky, Michigan, Ohio and Tennessee), it does not bind any other Circuits as legal authority.

STATE ISSUES

INDIANA

On **March 15, 2006,** the Governor of Indiana signed House Bill 1299 amending certain provisions of the Uniform Consumer Credit Code regarding consumer loans, charges, disclosures and limitations on practices relative to small loans made to residents by out-of-state creditors. It has limited application to mortgage lenders except for Chapter 23.

In this Section of the new legislation, a mortgage lender may not use the name of an existing mortgage lender or name confusingly similar to that of an existing mortgage lender when marketing to or soliciting business from a customer, if the reference to the existing mortgage lender is:

- Without the consent of that lender.
- Made in a manner that could cause a reasonable person to believe that the material originated from, was endorsed by or was in any other way the responsibility of the existing lender.

The new law does not prohibit the use of a reference to an existing mortgage lender in marketing materials if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation is originated by, endorsed by or the responsibility of the existing mortgage lender.

Note the key phrase "reasonable person". We ask; what is likely to deceive or confuse a reasonable person?

MISSISSIPPI

Mississippi House Bill 681 became law on **March 23, 2006**. The new law allows licensed or registered mortgage companies to collect from a borrower, a fee to be paid to a lender to lock in an interest rate and/or a certain number of points on a mortgage loan. A mortgage company or broker must enter into a lock-in agreement, pursuant to which it collects the fee. The lock-in fee shall not exceed certain amounts as set forth in the statute according to a sliding scale based on the length of the lock-in. The statute also sets out the prescribed content of the lock-in agreement.

UTAH

Senate Bill 128 became law in Utah on **March 20, 2006.** The statute relates to revolving credit line trust deeds and addresses the secured lender's duties to release security under its revolving credit line. Specifically, the new law requires a secured lender, under a revolving credit line, to close that line and release its security interest if:

- the secured lender receives payment in full from the borrower or a third party involved in a sale or loan transaction affecting the security interest, and
- a written request to close the credit line.

The statute does not discuss whether penalties may be collected in the event of a closure of a credit line prior to the initial term.

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:

David J. Alt, Esq.
David.j.alt@altandassociates.com