Legislative Update

Amendments to the New Jersey Home Ownership Security Act of 2002

SUMMARY.

On July 6, 2004 New Jersey adopted Amendments to the New Jersey Home Ownership Security Act of 2002 ("the Act"). The Amendments contain improvements to what had been perhaps the most restrictive "predatory lending law" in the country. The Act set forth limits applicable to almost all residential mortgage loans, but established new disclosures, tough restrictions, and substantial penalties and assignee liability for borrowers, lenders and assignees of "high cost" mortgage loans.

Most of the amendments apply to lenders that make "high cost" mortgage loans. Unless your financial institution is making "high cost" mortgage loans these changes will not affect your loan programs in New Jersey.

FIRST AMENDMENT.

Covered Home Loans Removed. The Amendments remove the "covered home loan" definition and the prohibition associated with it. Under the Act a "covered home loan" was defined to include a residential mortgage loan with points and fees exceeding four (4%) percent of the total loan amount for loans over $40,000.

In connection with such "covered home loans" the Act prohibited the practice of "flipping". Flipping, under the Act was defined to occur when a creditor made a "covered home loan," the proceeds of which were used to refinance an existing home loan made within the prior sixty (60) months where the new loan did not provide a "reasonable, tangible net benefit to the borrower." This uncertain standard made it almost impossible for lenders to refinance a "covered home loan" with any degree of comfort. The Amendments to the Act delete the "covered home loan" concept and the prohibition against "flipping." While this Amendment is important, it does not apply to lenders who did not participate in the non-prime lending industry.

SECOND AMENDMENT.

High-Cost Home Loan Scope Broadened. The number of non-prime loans now deemed "high-cost home loans" under the Act is broadened by the Amendments. Specifically, the "total points and fees threshold" which under the Act determines whether or not a loan is a "high cost" mortgage loan," has been lowered from 5% to 4.5% of the total loan amount when the loan is $40,000.00 or more. This change will increase the pool of loans subject to the Act's "high-cost" provisions. Since the Amendments are effective immediately, be carefully to review loan applications currently pending that previously were determined not to be high-cost home loans to make sure that they are still not "high cost" under the Amendments.

THIRD AMENDMENT.

No Class Action Enforcement. The Amendments clarify that class actions are prohibited in connection with any "defense, claim or counterclaim" brought by a borrower under Section 6(c) of the Act in connection with a high-cost loan. In other words, the defense, claim or counterclaim may only be asserted in an individual capacity. This is a welcome change.

FOURTH AMENDMENT.

Expanded Corrective Action. Under the Act, a lender had a ninety-day period after loan closing but prior to receiving any notice of error from the borrower to correct any unintentional bona fide error. The amendment expands this period from 90 days to 365 days after loan closing, but again, prior to receiving notice from the borrower.

FIFTH AMENDMENT.

Department of Banking and Insurance Interpretations. One of the concerns of many lenders was the Act's extremely narrow delegation of interpretative authority to a regulator. The Department of Banking and Insurance had very limited authority to interpret any part of the Act. The Amendments now authorize the Commissioner of Banking and Insurance, in consultation with the Division of Consumer Affairs, to issue regulations to implement any provisions of the Act and the Amendments. It is expected that the Department of Banking and Insurance will now reissue previous interpretations as official regulations.

SIXTH AMENDMENT.

Points and Fees Definition Clarified. The Amendments have changed the definition by stating that a prepayment fee is not to be included in "points and fees" when a new loan refinances a previous loan originated by the same broker but funded by a different lender. This change appears to mean that a correspondent lender refinancing a loan that is closed in its name with funds from a table-funding investor would not have to count in "points and fees" any prepayment fee that the borrower would be required to pay in connection with the payoff of the prior loan if a different table-funding investor were funding the new loan. It is expected that there will be further clarification from the Department of Banking and Insurance.

Should you have any questions in reference to the effective of the Amendments on your financial institution, please feel free to contact our office.

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