

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612

Mailing Address:
P.O. BOX 4125
IDY, CA 92549-4125

DAVID JEROME ALT
Attorney at Law
David.j.alt@altandassociates.com

TELEPHONE 949.253.5755
FACSIMILE 949.253.5756
www.altandassociates.com

January 6, 2012

HAPPY NEW YEAR

NEW CALIFORNIA LAWS AFFECTING MORTGAGE LENDERS

As always, the start of the year brings a spate of new laws or regulations restricting or regulating the activities of mortgage lenders. Summarizing all new statutes which may have some affect becomes a bit tedious. Therefore, we have selected those laws which have particular impact on our clients who do business in California as, mortgage bankers, lenders and brokers.

GOOD LUCK IN THE NEW YEAR

LAWS OF GENERAL APPLICATION TO ALL EMPLOYERS

Senate Bill 459, *Willful Misclassification of Independent Contractors*. This law creates penalties for what is called “willful misclassification” of employees as independent contractors. The term “willful” means the “knowingly or voluntarily misclassification” of a worker as an independent contractor. Penalties are substantial, ranging from \$5000 to \$15000 per violation with an additional \$10,000 to \$25,000 per violation in the event of a pattern or practice of such conduct. Paid advisors can be held liable also.

AB 1306, *Commission Agreements in Writing*. As of January 1, of next year, commission agreements with employees are required to be in writing and signed. The details of the Commissions structure must be set forth as to the commission calculation and date of payment. Employees must sign a confirmation acknowledging receipt of the agreement. Modification of the plan would require a new or modified agreement.

AB 469, *Non-exempt Employees of California Employers*. This bill requires employers of California non-exempt employees to provide their employees a written disclosure which must include all of the following:

1. Rates of pay and basis thereof, whether by the hour, shift, day, week etc.,
2. Allowances claimed as part of the minimum wage,
3. Date of regular pay day,
4. Employer’s name and any DBA,
5. Address and telephone number of the employer’s main office and a mailing address if different, and
6. The employer’s Worker Compensation Insurance carrier contact information.

The California Department of Labor is preparing a draft disclosure for the use of California employees. Changes to the information must be provided within 7 days of any applicable changes.

SB 458, *Compensation to Negotiating Broker*. SB 458 was little noticed when enacted in 2011 and became effective in July of 2011. SB 458 prohibits short sale lenders

from requiring the seller to pay any additional compensation aside from the proceeds of the sale.

The payment of short sale negotiator fees by a buyer, as long as the purported short sale negotiator is properly licensed under California law, is not prohibited. However, there must be full written disclosure to all parties in the transaction including the originating lenders.

Advance fee laws apply and those rules of the Department of Real Estate regarding the payment of “advance fees” must be followed. This includes the somewhat onerous task of submitting a proposed advance fee contract to DRE for approval or rather “non-objection”.

SB 4, *Foreclosure Notices.* The new statute provides for additional information of key aspects of the foreclosure process. Effective April 1st of next year, 2 additional paragraphs must be added to the Notice of Trustee Sale informing potential bidders of risks associated with purchase of foreclosed property and of owners with information concerning postponement of the sale.

SB 53, *Disciplinary Action.* This law gives the DRE enhanced enforcement powers to combat mortgage fraud and other misconduct. The bill lists a number of new “tools” but those most important are:

- The Commissioner may issue citations of up to \$2500 to licensees as well as to unlicensed persons found to have violated the real estate law.
- Real estate brokers who engage under the authority of their license in escrow transactions numbering 5 or more in any calendar year or whose transactions equal or exceed 1 million dollars, must file a report. The report must detail the number of escrows and the dollar volume of escrows during the calendar year. This bill becomes effective July 1 of next year.

SB 6, *Real Estate Appraisals*. While there are other similar provisions of other state and federal laws and regulations, this bill makes it illegal for a real estate licensee to knowingly misrepresent the value of real property. In addition, the licensee is prohibited from expressing an opinion of the value of residential real property, to a lender where there is an economic interest to the licensee.

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

Only those persons who have personally requested this newsletter are on our distribution list.

SHOULD YOU NOT WISH TO CONTINUE TO RECEIVE THIS SERVICE, PLEASE JUST SEND US AN EMAIL TO “OP-OUT” AT:

sherry.edwards@altandassociates.com

ALSO, SHOULD YOU HAVE COLLEAGUES WHO WISH TO BE ADDED TO THIS COMPLIMENTARY SERVICE, PLEASE HAVE THEM E-MAIL US AT:

sherry.edwards@altandassociates.com

ALT & ASSOCIATES provides regulatory, compliance, 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

You may view previous issues on our website at:

www.altandassociates.com

Who's Who in American Law

Martindale Hubble Pre-Eminent Attorney