

FRANZÉN AND SALZANO WELCOMES JENNIFER DOZIER TO THE Firm



We are pleased to announce that Jennifer Dozier has joined the Firm as an associate attorney. Jenny graduated from the University of Mississippi School of Law, where she served as a member of the Mississippi Law Journal. Prior to joining the Firm, Jenny worked on real estate and litigation matters for a Georgia law firm. Please join

us in welcoming Jenny to the Firm.

FEDERAL HIGHLIGHTS

The **Federal Reserve Board** has increased the HOEPA dollar threshold for the year 2006 to \$528.

Fannie Mae has published a new version of its residential mortgage application, form 1003.

The **Office of the Comptroller of Currency** released two interpretative letters of interest for national banks. Letter #1015 addresses the preemption of Indiana law on balloon payment consumer loans. Letter #1016 concludes that neither 12 CFR 34.4 nor the National Bank Act preempts application of state laws to loans simply because the loans were purchased and held by national banks acting as trustees for the benefit of investors in the trusts.

STATES IN BRIEF

In August, the Ninth Circuit held that the National Bank Act preempts **California's** exercise of visitatorial authority over operating subsidiaries of national banks. However, the court found that DIDMCA did not preempt California's per diem loan-interest statute.

Connecticut enacted S.B. 1219 to clarify that the license of a first or second mortgage lender will not expire if a licensee files a late renewal application.

Delaware passed H.B. 79 adopting the Uniform Real Property Electronic Recording Act. Delaware also enacted legislation (DE S.B. 143) providing for a homestead exemption.

Georgia adopted rule changes, effective September 5, 2005, applicable to GRMA licensees. The adopted rules relate to employee background checks, record keeping, mortgage loan transaction journals, audits, continuing education and restrictions on employment and licensing. Effective January 1, 2006, individual loan originators must be licensed under the **Idaho** Residential Mortgage Practices Act. ID S.B. 1389.

Illinois H.B. 4050, effective January 1, 2006, creates a predatory lending pilot program within certain zip codes (primarily Cook County) that will require brokers, originators, credit counselors, title insurance companies and closing agents to submit information to a predatory lending database administered by the Department of Financial and Professional Regulation.

The Illinois Supreme Court ruled in favor of lenders in the case involving the Illinois Interest Act (*U.S. Bank, NA v. Clark*). The court held that Illinois implicitly repealed section 4.1a's 3% limitation on points, fees and other charges and also held that Illinois has not opted-out of DIDMCA preemption.

Illinois amended the Mortgage Escrow Account Act, effective January 1, 2006.

Iowa amended the Mortgage Banker and Broker Act (House File 737).

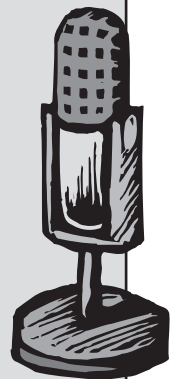
Kansas H.B. 2172 amended the Mortgage Business Act and the UCCC.

Maryland's highest court determined that DIDMCA's preemption applied only to lender fees and charges and did not apply to brokers (*Sweeney v. Savings First Mortgage LLC*).

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"TALKING THE TALK"

In **November**, **Terry Franzén** will speak at ACI's Predatory Lending Conference in Las Vegas. In **November**, **Loretta Salzano** will address the Consumer Credit Conference in Dallas and she will chair and present at ACI's Predatory Lending Conference in Las Vegas. She will also speak to the Georgia Real Estate Closing Attorneys Association regarding affiliated business arrangements.



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Maryland enacted Senate Bill 159 requiring mortgage lender licensing for some previously exempt entities.

The **Massachusetts** Division of Banks adopted revisions to the existing high cost mortgage loan regulations found at 209 CMR 32.32.

Minnesota recently enacted Senate File 1636 relating to the handling of advance fees by mortgage loan originators.

Montana amended provisions of the Mortgage Broker and Loan Originator Licensing Act. MT S.B. 274 and 117.

Nebraska H.B. 533 provides new restrictions on solicitations.

Effective October 1, 2005, **Nevada** A.B. 365 increased the homestead exemption to \$350,000.

New Hampshire revised the Licensing of Nondepository First Mortgage Bankers and Brokers Act to apply to both first and second mortgages. NH S.B. 223.

New Mexico amended the Mortgage Loan Company and Loan Broker Act to add wet settlement requirements. NM S.B. 652.

North Carolina amended the Mortgage Lending Act to provide for the registration of "limited loan officers" of "affiliated mortgage bankers" (NC H.B. 237), and added to its statutes regarding mortgage satisfaction (NC S.B. 734).

A **South Carolina** Master in Equity in a foreclosure action recently invalidated a lender's mortgage because

the loan was closed by the title company's attorney rather than an outside attorney.

Tennessee S.B. 1346 amended the definition of "mortgage loan broker" in the Residential Lending, Brokerage and Servicing Act. TN S.B. 1082 created the Residential Closing Funds Distribution Act of 2005.

Texas H.B. 955 amends the Finance Code advertising requirements applicable to consumer credit. Texas S.B. 988 revises the requirements for a loan officer license and for mortgage broker and loan officer renewals. Texas S.B. 335 enacts the Uniform Real Property Electronic Reporting Act. Texas S.B. 99 relates to the extension of credit to identity theft victims. The Finance Commission adopted standard pre-qualification and pre-approval forms under the Mortgage Banker Registration Act.

The **Vermont** Legislature increased the surety bond required of an applicant for a mortgage lender or broker license.

Washington passed S.B. 6043 relating to security breaches that compromise individuals' personal information.

Effective July 1, 2005, **Wyoming** requires a prepayment penalty disclosure, if applicable, to be given within three working days of taking a loan application.

Publisher's Note:

Points of Interest is published by Franzén and Salzano, P.C. for clients and colleagues in the lending industry and should not be construed as legal advice. The contents are for general information purposes only. You are urged to consult legal counsel concerning any specific situation or legal issue.

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